

HINDU CODE BILL

Contents

DISCUSSION ON THE HINDU CODE AFTER RETURN OF THE BILL FROM
THE SELECT COMMITTEE (11TH FEBRUARY 1949 TO 14TH
DECEMBER 1950)

SECTION III B

Pandit Lakshmi Kanta Maitra: Primitive.

The Honourable Shri K. Santhanam: Either we drop them deliberately through legislation or they will be discontinued in an irregular and disorderly fashion.

Pandit Lakshmi Kanta Maitra : Follow Bengal in other respects also.

Some Honourable Members: Order, order.

Sjt. Rohini Kumar Chaudhari : On a point of order. Sir, what right has a Member to call ' order, order '. I find Shrimati Durgabai calling ' order, order '.

Shrimati Renuka Ray (West Bengal: General): Is this a point of order ?

Mr. Deputy Speaker: I am extremely glad to find that hon. Members are sharing the right of the Speaker along with me.

Sjt. Rohini Kumar Chaudhari : (*rose*).

The Honourable Shri K. Santhanam: I am afraid I shall not be able to give way to my Hon. friend from Assam.

Sjt. Rohini Kumar Chaudhari: All right, I shall keep quiet. If you want to suffer from the tyranny of women, you suffer.

Mr. Deputy Speaker : Order, order.

The Honourable Shri K. Santhanam : Sir, much has been said about the so-called sacred institution of joint family. In the mediaeval and ancient times, this so-called joint family might have served a very useful purpose. It is not my business to deny that. But, today, joint family exists only in controversy. I know the peasants ; I have been in the rural areas probably much longer than many of you. I have worked for ten years continuously in the rural areas. I know. Sir, the first thing, when a peasant's son marries, the peasant does is, to set up a new house, give the son his share in the ancestral land, one acre or half an acre or one-quarter of an acre, and establishes the son as a separate family. Unless this is done, the peasant knows that his family will be disintegrated. In the case of certain very rich people, the so-called joint family may continue with a double system of account keeping for certain purposes, to cheat the Income-tax and for other purposes. Ordinarily, even today, in the middle class families, what happens ? One son lives in the village; another

son is in Delhi in service in the Government of India; another son is in Madras in some other service; another son does business. What is the meaning of maintaining a joint family and ancestral property ? It is better that they are allowed to partition. Then, if they want voluntarily to come back and live together, let them become a co-operative society, let them become any kind of legal personality suited to modern conditions. To continue the joint family owing to ancestral worship, without regard to the existing circumstances, I think it is sheer conservatism run mad.

Shri Brajeshwar Prasad (Bihar : General) ; A Daniel come to judgement.

The Honourable Shri K. Santhanam : My hon. friend from Bihar is a supreme example of Daniel as he has proved in the constitution making, and I am sure he will prove himself so here.

Shri Brajeshwar Prasad: You are also.

The Honourable Shri K. Santhanam: I am not giving way.

Mr. Deputy Speaker : Let there be no talk across the table. I am exceedingly sorry ; I have been a little indulgent. I find an acrimonious controversy is carried on. So long as there is good humour there is no harm. However, the hon. Member must be allowed to go on. He may lose the trend of his thought. Otherwise also it is inconvenient to go on being harassed.

Sjt. Rohini Kumar Ghaudhari: Mr. Santhanam is in a very good mood.

The Honourable Shri K. Santhanam: Because my case is simple and straightforward and I need not get a bad temper or raise all kinds of fantastic bogeys. Let me now come to the next aspect, that is, rationalisation. One point which has evoked the greatest amount of opposition is the daughter's right to the father's property. If the old property had remained intact and if property consisted only of agricultural lands, then I can sympathise with those who say that to bring in a foreigner, an outsider into the family may mean great deal of inconvenience. I have already stated that property is moving from immovable property to movable.

Dr. P. S. Deshmukh (C. P. and Berar: General) : How can it ? All landed property cannot be dissolved. The Hindu Code Bill will not evaporate lands.

The Honourable Shri K. Santhanam: So far as the peasant community is concerned, they automatically divide on marriage. If a son-in-law is willing to come and live in the village, I do not see why he should not-be allowed.

Dr. P. S. Deshmukh : Hereafter, the rule will be divide and rule.

The Honourable Shri K. Santhanam : If the sons can divide, the daughter also can divide. In the future property will consist of cash securities and other things. Therefore, there is no reason why the daughter should not have the same right as the son. As a matter of adjustment, I am prepared to throw out one or two ideas. In estimating the share of the married daughters

in a family, I think it would not be unfair to set off any amounts which may have been spent for their marriage. In many of the middle class families, the amount spent for the marriages is often equal to if not greater than the share which the daughter may get. I think that would be a fair set off. Similarly, if there is only one dwelling house or if there is only a small extent of agricultural land, I think it will not be unfair to say that so far as the daughter's share is concerned, she must take her share in the form of cash or other movable property rather than insist on a partition of the house or the immovable property.

Ch. Ranbir Singh (East Punjab: General) : Wherefrom to bring that cash?

The Honourable Shri K. Santhanam: If you have a creditor, where will you find the cash ? Is it not possible ? It may *be* paid in easy annuities or in some such manner. In a harmonious family, adjustment will be easy; in an inharmonious family, courts can find ways and means of adjusting the burden without inequity to any party. Subject to these adjustments, I do not see any rational justification why the daughter should be treated exactly on the same basis as a son. I do not think there will be any kind of hardship. All kinds of bogeys have been raised. After all, the daughter becomes a daughter-in-law. If the daughter gets a share, similarly the daughter in the other house gets a share and therefore in the long run, except for an adjustment of legal rights through the establishment of self respect and social equality between man and woman, the property arrangements will remain much the same; because at present the daughter does not take away from the father's house; she gets more in her father-in-law's house. Hereafter, under the Bill, she will take a little from the father's house, much less from the father-in-law's house. In the long run, there will not be much difference in the distribution of property. Only the process will be more satisfactory, and more self-respecting to all the parties concerned. The daughter will feel that she is as good as a brother; that is all. I think that that is a feeling which we ought to encourage in this country. We have removed all social inequalities in policies; we have given the women the same equal franchise as men. Why in point of inheritance and succession alone should we have any kind of stigma based on sex ? I think the sooner we voluntarily give it up, the greater will be the strength of the country. Otherwise, some day or other, on account of the adult franchise, there will be such a vast volume of feeling among the women all over the country that would compel us to make the change. Then, it would be a disgrace to the men of India. It is better you do it now in advance of adult franchise so that we can go to the probably five or six crores of women who will be voters and say, " look here, we have done the right thing before you wanted it; we have given you the votes; we have given you property rights;

you are equal to men; there be no more sex conflicts."

The last point I have to deal with is the question of reform. It is in the field of marriage there is any real attempt at reform. It is partly permissive and partly compulsory. The one compulsion is monogamy. I want all my friends and Members of this House to stand up and say whether they approve this reform or not. They have been very prudently silent on this subject and in spite of speaking for three hours, I don't see why people avoid this subject. Do they want to establish monogamy or not ?

Pandit Lakshmi Kanta Maitra: Monogamy is already established.

The Honourable Shri K. Santhanam : Some people actually enjoy the luxury of two or more wives, others enjoy mentally the possibility of more wives!

Shri H. V. Kamath: What about polyandry ?

The Honourable Shri K. Santhanam : Therefore I say this that this is one thing in which the old Aryan tradition had made a profound mistake. It is time that we who consider ourselves to be the glorious descendants of the great Aryans now confess that it was a mistake and correct it rather voluntarily and unanimously. This polygamy must go. But complete and absolute monogamy will also become a legal fiction unless you provide reasonable facilities for divorce in very hard cases. Unless we provide such an outlet, it will bring evil.

Smt.Rohini Kumar Chaudhari: Do you agree for the women being prosecuted for adultery ?

The Honourable Shri K. Santhanam: I agree to women being subjected to same penalties for the same crimes but probably my hon. friend from Assam has a soft corner for that subject. Monogamy and divorce provisions go together. They must be taken as one co-ordinated law and in this respect this Bill does propose a reform which is not sanctioned by the Shastras but this is a reform...

Pandit Govind Malaviya (U. P. : General): Do I understand that the hon. member will oppose monogamy also if divorce is not sanctioned ?

The Honourable Shri K. Santhanam : I will support monogamy in any case but I will support it in a rational form rather than in an irrational form. If my friend wants monogamy and at the same time that wherever a husband is impotent or a criminal, there should be no divorce or *vice versa*, then I think he wants monogamy in an irrational form. I want it in a rational form. That is the difference between us.

I will just touch one other aspect. One other great merit of this Bill it takes away all legal sanction from the caste system. We abolished untouchability in the Constitution. Now we take the social reform further and take away all legal sanction for caste. Here in this Bill whether it is for marriage or for any other

purpose, all Hindus from the so called Untouchables upto the so called Acharya Brahmins— all of them are one.

Some Honourable Members : Without a caste, who is a Hindu ?

The Honourable Shn K. Santhanam : My friend asks " Without a caste, who is a Hindu ? " With the caste, I think, Hindu is a monster according to me. (Hear, hear). In this country we want to establish a Hindu Community without caste. Either we cease to be Hindus altogether or we establish Hinduism without caste. There is no alternative left for us.

Shri Lakshminarayan Sahu: Mohammadans also can be called Hindus.

The Honourable Shri K. Santhanam : On the day the Muslims accept the Gita and Vedanta, I am prepared to embrace them as Hindus.

Shri M. Tirumala Rao: Even Gita refers to caste.

Mr. Deputy Speaker: Let there be less of this cross talk. The hon. Member may go on. Each one is trying to persuade the other.

The Honourable Shri K. Santhanam : In spite of interruptions I am going to convince some of my friends. My friend Mr. Tirumala Rao says that I am swearing by the Gita. What I am saying is they form the minimum article of faith for all the Hindus. Therefore, if after this Bill, there are no distinctions between Hindus, Muslims and Christians, then it is better for the whole country. We are not proud of keeping alive distinctions which have no meaning or which are irrational. If Muslims also remove all such distinctions which are irrational; if Christians remove all distinctions which are irrational, we shall before long meet on a plane in which we are all one—whatever we may call ourselves. Meanwhile our object both in the Constitution and in this Bill is to see that the majority community in this country are strong, united and have shed all prejudices and practices which have divided it into sects and will become an invincible foundation on which the glory and strength of future India can be built. I am sure that without this Bill and without the changes the Bill advocates, the Hindu community will be a weak, torn and unprogressive community and if the majority of the people continue in that condition we cannot make much of the political and other economic opportunities which the Constitution and God have given us. Therefore I have said this is really complementary to the Constitution which we have enacted and it is in the supreme fitness of things that the same body which enacted the Constitution will also be enacting this Hindu Code into Law. I hope it will be put on the Statute Book and our descendants will say that these people not only enacted the Constitution but also reformed the Hindu law.

Pandit Lakshmi Kanta Maitra: Destroyed the Constitution!

The **Honourable Shri K. Santhanam**: I believe our ancestors are watching and are blessing us for this.

Shri **Loknath** Misra : On a point of information. My friend has just now sworn by the Vedanta and the Bhagvad Gita is he prepared to reject any provision that will go against the tenets of these ?

The **Honourable Shri K. Santhanam** : If they are based on wrong premises, I am bound to reject them.

Mr. Deputy Speaker: It is unnecessary to carry on this argument.

The Honourable Shri K. Santhanam : Sir, I do not want to tire the House. I have dealt with the main points which came to my mind. I wish to appeal to those who by ancient prejudice have come to feel that it is their duty to oppose the Bill to reconsider their attitude, to have another vision—the vision of a Hindu community without caste, without distinctions, all pulling as one man. If we could convert the present disintegrated, weak and for a thousand years servile Hindu community into a very strong, healthy and great community, we would have done a work which our sons and grandsons will be proud of.

Shri **H. V. Pataskar** (Bombay : General) : Sir, we are considering a Bill which is going to revolutionise the structure of the Hindu society. That society comprises more than about 25 crores of people at the present time. It is therefore not unnatural that even the common man has begun to take interest in what is happening and it is best in the interests of all sides, to take into account the fact that when we are revolutionising by this Bill the whole structure of Hindu society, it is not desirable that we should ignore the feelings that have been roused in the common man with respect to the provisions contained in the Bill.

The common man is at the present moment ill-equipped with education. He is worried with the problem of feeding himself and his dependants. He is faced with scarcity of clothing, for want of funds if for nothing else, and he generally finds life so difficult. Even then he has begun to take interest in this legislation because he thinks that this Bill is going to affect the structure of his Hindu society, which is the growth and product of several centuries past. Therefore it is that we must first educate him before we undertake the serious task of changing the whole structure of the society to which he belongs. I will make it first clear that I am not opposed to many of the provisions of the Bill but the time selected for the purpose, to my mind, is most inopportune. I propose to take only 20 minutes and if I am allowed to make my remarks without interruptions I will be able to finish it within that time, because I am aware that there are many members of this house who are interested either on one side or the other and who want to take part in the debate.

The common man, so far as I have been able to understand his reactions

to the Bill, thinks that at present the attention of the Government should be concentrated on the problems which affect him in the matter of his food, clothing, inflation and several other things. When he is worried about his day to day needs and what he requires for his sustenance he naturally asks why are the Government interested in what form his marriage should be, whether he should have one wife or more, when he cannot even sustain one. All these things may be necessary and I am not opposed to reform. It has been admitted and our leaders are also saying it that we are passing through very critical times. We know the difficulties of the people. There is scarcity of food, clothing and the other necessities of life. Compared to the common man we are living here a comfortable life. He naturally thinks that what the leaders should concentrate upon is more the solution of his day to day problems than the problems relating to marriage, inheritance, etc. These things have been there for centuries past and it would not matter if they go on in the same way for some more months or even years.

If our sisters who are enthusiastic about the Bill or our other friends who are clamouring for the immediate codification and amendment of the Hindu Law, if they approach the common man in the rural areas, they will find that he is so much worried about so many other things that he is surprised why at this moment you should rush a measure of this sort through in this house. He naturally thinks that this should be stayed for the time being. There is quite a lot of discontent in the country. On account of the partition there is the problem of the refugees who have to be settled and sheltered. At this moment is it necessary to interest ourselves so intently on this question, as to what form our marriages should be ? The time chosen for rushing the Bill through is not very opportune and it is likely to add to the difficulties of the situation rather than do otherwise.

What are the subjects dealt with under this Code? Marriage, Inheritance and Adoption. So far as marriage is concerned there is even now the Civil Marriage Act, under which those that do not want to marry in the orthodox way can marry. Many people axe as a matter of fact doing it. Therefore this measure does not look so urgent as made out.

An Honourable Member; Under that Act you have to say that you do not belong to any religion.

Shri H. V. Pataskar: That is gone my dear friend: It is dead and gone, long past Under the Civil Marriage Act, any two Hindus belonging to any caste or community, without making a declaration that they do not belong to any religion, can get married and there is nothing to prevent them from doing so.

There is much agitation with respect to the question of inheritance. We have laid down the equality of the sexes as a principle in our Constitution and

in these days it is not possible for anyone to go back upon it. The objection raised is not with regard to the equality of the sexes. A father who has a son and a daughter loves them both equally and there cannot be any difference. But so far as inheritance is concerned it has to be looked at from a different point of view. For that you have to look at the development of the present structure of our society. This structure has been evolved through a process of evolution during the last many centuries. Hinduism is not a religion in the sense in which Christianity is a religion, Zoroastrianism is a religion or Islam is a religion ...

An Honourable Member: What is religion then ?

Shri H. V. Pataskar: Christianity is the religion of those who believe in Christ and follow his teachings in the Bible. The Zoroastrians are the followers of Zoroaster and Islam is the religion of those who believe in Mohammad the Prophet and the Koran as their sacred book. But what is Hinduism ? Hinduism includes not only the followers of the Vedas or the followers of Rama and Krishna or Shiva or of the innumerable gods in various shapes and forms but it also includes those who worship nature and those who do not believe in any God whatsoever and those who do not believe in the oneness of God also. Their places of worship, methods of worship and objects of worship are all varied. Hinduism is a growth which has absorbed all the different currents and streams of social and religious beliefs and practices prevailing over several centuries. It is an all embracing faith consistent with the ideal of. Hinduism at present is a growth which has contrived to combine in it all these various streams of life. At present Hinduism may be a cast-iron system, but it has not always been so. Our religion is based not on the tenets of one particular man or of one particular *book*, but it is based on what is *dharma*, and means: *Dharma* is that which sustains society. That is the ideal on which our Hindu society is built, namely that which is necessary for the sustenance and advancement of society. Of course I do admit that the present state of Hindu society is not a very happy one. But it has not been all along so. Therefore I take you to this point because it will give you an idea as to why there is objection to this Bill. That which sustains society is religion and sustenance of the society is our ideal. Our society may appear stagnant at present, but it is not, has not been really so. Hinduism has undergone vast changes in the course of its evolution. I am not afraid of changes. It has undergone several changes in the past. At one time Buddhism was flourishing in this land and engulfed not only Bharat Varsha but it spread to far off countries beyond Bharat Varsha. But today there are very few Buddhists to be found here. What has happened to them ? They have been absorbed in Hinduism, they have undergone a metamorphosis, and we of the present

generation are their descendants. That shows that we are not a stagnant race and that we have adapted ourselves to the changing needs of society. I for one be changed. That is not the real nature of Hinduism. And I am not one of those who say that what we now call Hindu Law should not be changed. Our Law has in fact undergone changes even during the period of the British domination.

The previous speaker, the Hon. Mr. Santhanam, rightly referred to the fact that judicial interpretations by courts which were not conversant with the original tenets of various laws regarding inheritance, adoption and marriage have not only changed the course of our social and economic life but have created many anomalies also. It has certainly become desirable to remove those anomalies and bring our Law in conformity with the changing needs of society. The world is changing fast and we cannot but be affected by what is happening elsewhere. We do not wish to say that we will keep ourselves away from the rest of the world. That is not the idea. But the codification of the Law is one thing and amendment of it is another. This Bill seeks to do two things. We want to codify the law and amend its provisions. So far as codification is concerned, I understand it means that we want to remove the anomalies. At the present moment we have got so many systems of law prevalent. There is Dayabhaga in certain parts, there is Mitakshara in certain other parts, and the Bombay school has its own distinctive features. And there is what is called Marumakkattayam in certain parts of South India. But the areas where they are prevalent have also become well-defined, and there is a certain amount of stability. Therefore, if we proceed first with the task of codifying the law as it stands at present in these well-defined areas, that itself will not only bring about uniformity but it will also lead to a process of amendment, at a later stage. Mere codification of the law as it stands will also not evoke much controversy, because that is the existing law. Irrespective of the question that it has been modified by the courts consisting of British judges, there is a certain stability about it. Therefore, if we only confine ourselves to codification I think, much of the opposition that we see at the present moment will not be there. Not only that. If we do the codification only, we will secure the good will of the people and I believe that it will facilitate the amendment of the Hindu Code for certain other matters and by gradual stages subsequently. But the amendment of the existing law in the way it is tried to be done is another matter. Codification and amendment of the law have been hanging fire for the last so many years. In my view if we had proceeded with the codification only as a first step, the law would have been codified long ago. Ever since the Rau Committee was appointed, evidence was taken and so many Reports and so many Bills were formulated. But they

tried to do two things simultaneously, namely, codification as well as amendment. Naturally, both have remained unfulfilled. If they had confined themselves to codification only, it would have been done long back and the stage would now have been reached for amendment. That is my view of the matter.

The present Bill deals, as I said, with three distinct matters, namely, marriage, inheritance and succession. Let us see what the basic idea of our society is. With the impact of modern ideas, modern education and modern methods of life the question of equality of sexes has naturally been agitating the minds of people, particularly of the educated women of the country. We have also accepted that equality in our Constitution. So, superficially looked at, it strikes one as to why there should be any difference between a son and a daughter in the matter of inheritance. But the question is not such a simple one. A father's desire for the well-being of a son or daughter cannot be different. Naturally his love and affection is bound to be equal. No sensible man can think that the son should get everything and the daughter nothing. In fact that has not happened. Reference was made that even in the middle-class families,—leave aside the rich, they are very few in number—the father spends much more on the marriage of the daughter than what his son could ever hope of getting, in many cases even at the cost of the education of his sons. I say 'in many cases'. That is my reading of the matter. Why then is there opposition in regard to inheritance? Even the Sanatanist loves his daughter as much as his son. We cannot say that Sanatanists make a difference in this respect. The opposition is due to an important factor for considering which we must look to the whole structure of our Hindu society.

A reference was made by my hon. friend Pandit Mukut Bihari Lal Bhargava in this respect. I would like to elaborate that point a little in as short a time as I can. The whole structure of our Hindu society is evolved through centuries and centuries of time. In the structure of our society the basic unit is the family. And on the continuity of that family as a unit rested naturally the stability of our society. It is not based on an individual as unit, but more or less the basis of the whole structure is the family as a unit. And the continuity of the family was naturally the main object with which all our laws and customs have been evolved from time to time. The pivot therefore was the continuity of the family which was the unit of the structure. Daughters naturally by marriage pass into a different family while the sons remain in the family to continue it. To foster the continuity and to prevent its being broken up, the joint family system was evolved. Why was the joint family system a peculiar feature of Hindu society? Because Hindu society is based on the continuity of the family. That is why the joint family system is a peculiar

institution of Hindu Law not known to other systems of law which are more or less based on individuals. Till only a generation or two back the joint family system worked well. It has maintained the continuity and stability of our social structure for centuries past. That is why there is objection to the throwing open of inheritance to the daughter. That objection is not for political or social reasons but because if you open the inheritance to a daughter the result is that the whole social structure based on the joint family system will be broken.

The trend in the modern world is towards individualism. The joint family system is cracking in many places. I would go to the length of saying that the joint family system would not continue for all time under modern conditions. But as it is there, the question is whether we shall gradually replace it by the individual as the basis of our society or whether we shall break it up by law as is proposed to be done by this measure. If we want to break up the Hindu society suddenly, then I am afraid we shall be rocking and shaking the foundations of that society which may result in consequences unforeseen and unpredictable. The danger involved is not the mere opening of inheritance to daughters but the fact that by that opening up of inheritance the whole basis of society is involved. Hence the opposition. If only we try by an evolutionary process to help in the process of disintegration of the family which has already started owing to various economic and social causes, the same results as are aimed at will be achieved but not suddenly and abruptly. There is a clause in the Bill which says clearly that from the date of the commencement of the Code the whole joint family system as such will disappear. You are trying to do it suddenly and to my mind that is sure to rock the very foundations of the society which has been based for centuries past on the joint family as a unit of society. I would appeal to my enthusiastic reformer friends that while I am one with them, that this system no doubt has to be changed, and that as the world stands today no one will be able to resist it for too long, while that is so the question is whether we shall do it gradually, whether we shall carry the people with us and go as far as they come with us, or as far as we can drag them with us, or on the other hand whether we shall suddenly, by a stroke of the pen and by legislation, say that all this joint family system is destroyed. Even in these days when owing to abnormal circumstances people are worried by so many problems, this question is attracting their attention and therefore any abrupt action is likely to result in a state of affairs which is desirable neither to the reformers nor to the others. I agree we can't remain stagnant *The* Hindu society has undergone so many changes in the past but by a different process altogether. If we try to force the events which must happen gradually, I am sure the result is not going to be very happy.

Sir, I am surprised at one thing. Here we are trying to preserve adoption. I don't know for what purpose. Adoption is a thing which is peculiar to Hindu law. In other societies also children are adopted but not for the purpose of continuing the family, only to satisfy the natural craving in any human being to have children and to rear them. I am told that in America and England also people do adopt children but there the object of adoption is different. The adoption as envisaged in the present system of Hindu law is peculiar and it is so because the Hindu structure of the joint family is based on the continuity of that joint family. But after the break up of the joint family in the way you are trying to do by this legislation, what is the necessity *for* making a provision for adoption? Look at it from a different view. Why was adoption a peculiar feature of Hindu society ? Because the main feature of the Hindu society was the basis of the joint family and its continuity required adoption. With the breaking up of the joint family and the coming of individualism, I don't see why we should waste our time on trying to preserve adoption. I am certainly against adoption. Even in the case of adoptions that now take place, 99 cases out of 100 result in litigation in courts because the whole idea has undergone a change. The widow adopts a child thinking that the boy adopted might be useful to her in managing her property and affairs free of charge. The boy thinks that by adoption he will get something from the person who adopts him for nothing. So, at present adoption takes place purely from a motive of self-interest; adoption as conceived in the olden days is disappearing. As a lawyer of some standing and experience, I have found that in 99 out of 100 cases of adoption the result has been litigation because the original idea underlying adoption has undergone a change. But now with the coming into force of the provisions of this Bill the whole joint family system will disappear, the individualistic society as in other parts of the world will come and it is therefore not necessary to make any provision regarding adoption. It would be confusing to do so. If we are consistent and logical in what we are doing, we should do away with adoption altogether.

I have now to refer to marriage and divorce. A point was raised by the Hon. member Mr. Santhanam who asked everyone whether they were against or in favour of monogamy. I would say that monogamy is absolutely necessary in these days. I don't think there is any member in this house who is opposed to it. But is the Hindu Code Bill necessary for that purpose ? We have got a measure in the Bombay Province by which, so far as that Province is concerned, there is monogamy and as a natural corollary to it divorce in certain cases is allowed. We have not gone further than that measure in these matters. If the only object is to ordain monogamy then I say there can be no objection to it, for, apart from ideological reasons there are practical

reasons also in its favour. Nobody now wants to have more than one wife. There are very few excepting a few millionaires and multimillionaires who can afford to have that luxury; others can't have it. It is not even a mental luxury as suggested by the hon. Mr. Santhanam for the simple reason that one cannot manage without anxiety even with one wife and her children. What mental luxury can a man derive by the idea of being able to marry another wife under these circumstances ? As a matter of fact, it is quite simple proposition and I think both sides would agree that monogamy must be the rule.

But let us not try to confuse the real issue regarding divorce. As soon as you have monogamy the result is that supposing one of the mates is a leper you have to make arrangements to see that the other is relieved from that liability or else you will be denying him the conjugal right. In some respects divorce is a corollary of monogamy. Even Manu, the great law giver, has provided for such cases.

But the main point so far I am concerned is that whether you lay down monogamy by law or not it is going to be the rule with at least 9,999 out of 10,000 people. So that question need not agitate our minds at all. Sir, apart from all these considerations, there is one last point. A uniform Civil Code must be our endeavour according to article 44 of the Constitution which we have already passed. We have incorporated a Directive Principle in our Constitution that the State shall endeavour to secure a uniform Civil Code throughout the territory of India. I would like you seriously to consider whether by enacting a measure like this only for the Hindus we are advancing the cause of our progress towards that ideal. I should think that we are going backward rather than forward. My hon. friend Mr. Santhanam seemed to think that after the passing of that article 44, we are trying to progress towards that ideal by this measure intended to weld Hindus into one. It may or it may not be so. What is to be welded in the interests of the security of our nation is not the welding of Hindus alone but all the citizens of this country. All the inhabitants of India should be welded into one. Marriage, inheritance etc. form part of civil codes of all the countries world over. They must do so in India also. That Code should apply to all citizens whether they be Hindus, Christians or Parsis or Muslims. From that point of view, we are going exactly in the opposite direction. I tell you why. The shibboleth of no interference in religious or semi-religious matters was the creation of a foreign government. It was imposed upon us in their interests and not in our interest. What is there today to prevent us from including all these things in a uniform Civil Code ? The present Hindu Code was conceived under different circumstances, and at a time when there was no ideal of having a uniform Civil Code. But since then,

things have changed enormously and especially after Pakistan, it should be our endeavour to bring closer all the different elements in the country, be they Hindus, Christians, Muslims or Parsis. I do not want that anything should be done for Hindus alone in such matters. We have already decided upon joint elections for welding all the people of our country into one. One uniform Civil Code will further bring all the people together. That is the process which we must follow and which demands the attention and interest of all of us. We must give up this idea that we cannot interfere in the laws of inheritance and other social matters of persons belonging to other religions. That idea must go. At the present moment, instead of building one well-knit society, we want to stick to the old thing which was conceived at a time when the aim was to keep us apart. Now the idea is different. The security and well-being of our people demands the enactment of a uniform Civil Code. I do not care whether I offend the susceptibilities of some orthodox friends when I say this, but I am quite frank and open. If things are to be done, they must be done in the right way. We cannot partly stick to the old things and partly bring in new things. In this connection, I can mention that a uniform Civil Code is in operation in Goa. The Law minister himself probably knows that. The laws of inheritance etc. are applicable to Christians, Hindus, Muslims and everybody alike in that part of India under the Portuguese. If that is so, why should we be afraid ? Our fear is the result of what we have inherited from the past—this shibboleth, I said, of non-interference in religious or semi-religious matters. But that was done by the British for their own purposes, because they wanted to keep us apart. Now our ideal is to unite all our people in the nation. What we ought to do is instead of proceeding with a Bill of this nature, our Law Minister should, immediately after the 26th of January 1950, bring forward a uniform Civil Code applicable to all people throughout India. I know my enthusiastic sister Members thought when I rose to speak that I was an opponent of this Bill. Let me hasten to add that I am entirely for equality and all those things. But this is not the way in which we should do it, by destroying one thing and creating difficulties in another. For the sake of a uniform Civil Code, we can go and tell our Hindu friends that the joint Hindu family must go, that it is necessary in the interests of the nation. But what we are doing is in the opposite direction. I am afraid it will lead to very undesirable and unforeseen consequences. I will just cite an example. In Ahmadnagar City in Bombay province, a young Hindu widow wanted to marry a Muslim. I do not know whether it was a love affair or what it was. But she wanted to marry a Muslim. As you know, those days we were passing through critical times. There was a lot of trouble. There were riots and some lives were lost. So this Muslim gentleman got afraid not only for the sake of his own safety but the safety of his community. He said I do

not want to marry or do anything of the kind. She could not marry without conversion to Islam as the Muslim gentleman had already wife and children. She could marry only if she converted herself into a Muslim. In the Province of Bombay we have also enacted a measure which prevents a Hindu from marrying more than one wife at a time but does not prevent Muslims from doing so. By the present Bill also you are giving the exclusive right to a Muslim to have as many wives as he likes or at any rate up to four. Now what happens is, if a man,—a very wealthy man—wants to marry another wife, he can get himself converted into a Muslim and he can have as many wives as he likes. Considered from all points of view, the interests of our country demand that hereafter at any rate we should strive to achieve a uniform Civil Code for all people. That is what is happening all over the world. As I pointed out before such a code exists even in a Portuguese territory in India *viz.* Goa. The present Hindu Code is an artificially engineered device of the former rulers, when they tried to keep us apart. We must try to get out of that rut. We must endeavour to form a well-knit, uniform society. We want to form a single State, not based on religious tenets, whether they be Hindu or Muslim or any other, but a truly secular State. For this a uniform Civil Code is absolutely necessary. I therefore suggest that this Bill should not be proceeded with. It will serve no purpose. Therefore, I appeal to my hon. Friend the Law Minister to withdraw this Bill, bring forward a uniform Civil Code regarding the matters covered by this Bill applicable to all citizens alike whether they are Hindus, Christians, Muslims, Parsis, Jews or others.

Shri Ram Sahai (Madhya Bharat) : (*English translation of the Hindi speech.*) Sir, while welcoming this Bill at the time it was being referred to the Select Committee, I had submitted that the Members of the Select Committee should consider some of its features which are at variance with the modern culture and civilisation which we profess these days. But I note they have paid no particular attention to that. Only yesterday we have come to know that once more, a Committee is going to be set up in this connection. For this reason alone, I stand here to take a little time of the House. I am not opposed to this Bill. I seek only to bring in certain amendments which may accommodate to some extent the views of those who are opposed to it and that is the only consideration which has guided me to stand here to take a few minutes of the House.

The hon. Mr. Santhanam, I have to submit, had observed that through this Bill we were going to discard all caste distinctions and thus marching towards integration. I agree that such an idea and a Bill of this type is worthy of our welcome and, as such, must be welcomed. In my opinion nobody need object if it becomes possible to have intercaste marriages, adoption and develop

other family relations with one another. But, in this regard, I feel a little difficulty which I intend to place before the House. This is over the succession issue. The custom of inheritance, no doubt, prevails and is practised at many places while in some a similar custom is being introduced in the Hindu Society. But considering its general set-up, it seems to me and I am of the opinion that ultimately this won't prove to be a good thing. My opinion is not based on any desire to withhold daughters' rights or deny equal rights to women and for the matter of that to treat them on a different footing. I emphatically disclaim any such motive. I doubt only if the idea can be made a workable one in a suitable way in the general set-up of our society in which we are living at present and which has been followed by us for so long. For instance, I want to say one word in connection with the right of inheritance. Herein share on equal basis has been conceded to daughters. I have no objection even if they are given a greater share. I want only to place before the house a few things in connection with some possible difficulties which may arise in future whenever such a problem comes up. At present girls enjoy a status in the Hindu Society which none else enjoys. Consciously or unconsciously we have tampered with the social regulations for the worse and now have to bring up this Bill as a repenting and a compensating measure. This is certainly our misfortune. Despite this I will assert that there is much scope left for reformation. To me no Hindu father can ever desire to mete out a prejudiced treatment to his daughter, rather he wishes to give away more and more to her.

Babu Ramnarayan Singh (Bihar : General) : It is correct to a large extent.

Shri Ram Sahai : He wishes to marry her in the house of a man placed better than himself. Not to speak of the father only, I am in a position to assert that even no Hindu brother can desire not to marry his sister in a more fortunate family. There may be found an exception in thousands or lakhs of cases. But I think that such an instance is almost non-existent. I fail to understand why then the issue of parity between sons and daughters in the matter of inheritance is made to confront us. I say so as we have before us the quarrels among the brothers over the division of property in the middle-class of our people. The daughter is given her share in the other family. But should she think of having a share in his father's property also; in my opinion it is certain to lead to disruption in our social structure. Out of this consideration I have come before the House to make these observations. In my opinion such a course is bound to impair the affection between a brother and sister to some extent. When disruption is possible among the brothers with a common family-link over the division of property, surely more serious quarrels will arise with daughter living in a different family. When such

quarrels can arise among brothers who have a common bond of love in between themselves, there shall be none in the house where the daughter goes who can maintain that affectionate regard. There shall be, on the contrary, persons who will incite and thus pave way for litigation. I don't at all follow why we should take recourse to a thing having full consciousness of its being pregnant with possibilities of disruption of our social structure.

Likewise I would like to say something as regards the Hindu joint family. We have recognised to set up co-operative societies and invite people's co-operation to spread this idea in the country. Why then we are anxious to do away with the joint family system which is based on principle of co-operation. Keeping these two things in view there should be some such provision which can meet them both. In my opinion the reason for restlessness prevailing in some sections of the public and the provision that makes this measure controversial is mainly the issue of succession. If somehow we can meet the point of succession we can then proceed with its proper consideration and pass this Code unanimously. Taking no more time of the House, I will submit only that the Members who are likely to be appointed to the Committee should conduct their deliberations keeping this difficulty in view, not because a daughter should get no share in her father's property but to see that it does not disrupt our social system any way.

There is another point of controversy that strikes me. I may be wrong but so far as I have pondered, it seems to me that taking an individual case of a son and a daughter, whereas a son is entitled to a share in the property of his parents only according to this Bill, a daughter enjoys a share in her father-in-law's property as well. I do not see any reason for this disparity. I fail to understand why such a provision has been made therein. The Hon. the Minister of Law may kindly throw some light on this aspect while replying to the Debate as to what consideration has led for the inclusion of such a thing. Taking no more time of the House, I will submit only this much.

Shri Krishna Chandra Sharma (U. P. : General) : Sir, I have been very attentively listening to the debate. I have very great respect for the views expressed by my elders, particularly Pandit Thakur das Bhargava and Pandit Lakshmi Kanta Maitra. I have been looking for support for their contention that the Hindu Code Bill interferes with our culture and civilisation and if it is placed on the Statute Book the whole fabric of our society will go down and there would be undue and improper interference with our religious institutions and our cultural background. To my misfortune I have not been able to find anything of that sort. There is nothing with regard to this Code which interferes with our religion in any matter whatsoever. Whether the Code is good or bad is another question. But the proposed Bill has nothing whatever

to do with Hindu religion and as such if it is passed the Hindu religion remains as good or as bad as it is without it.

The second is the question of culture. The question is whether a house belongs to A or B, it may belong to Rarnkumar and M. Krishnakumar, and if you just include Vimalkumari also, that is not going to affect Hindu culture. I want my friends before interrupting me, to understand the basis of culture. No culture is culture unless it has any function with a view to the development and evolution of society. If culture is merely static, then it cannot last, and if Hindu culture had been static, it would never have been stable, and it would not have lasted so long. Culture must have some function connected with evolution, it must have something to do with a society as it is evolving. Let us understand this before crying that culture is in danger. Culture and religion and the present Hindu society or Hindu law and even the Hindu religion are not the same as they were in the Vedic times. Do you want us to believe that the Greeks came here and the Romans came here, their penetrations were there and yet we remained blindly static ? Had we no heart, no mind and no receptivity whatsoever ? Because of the receptivity and ability to evolve, the greatness has been preserved; if we had not this receptivity, we would not have existed so long. That is my reply. So I say, let us take a rational course, take an intelligent view of the thing, a scientific view of the thing. Hindu law as it was in the *Smriti* was only a codification of the customs and usages prevailing before the *Smriti* writers came. There are lots of *Smritis* and they differ on various points and on the same point different writers have different views. And the Privy Council has said that even if they differ from each other, their commentary is to be accepted, not because it is based on the *Smriti*, not because it is based on truth, not because it has come down from the Vedas, but because if it is recorded in the *Smriti*, it must have been the usage or custom of the time before the *Smriti*. According to the view of Hindu law, a custom overrides the written law, the written text of law. Now, taking this view, I ask you seriously whether this is any question of religion, whether it is a question of culture, whether Hindu society will fall down by including Vimala along with Rarnkumar and Krishnakumar ? Therefore, do not bring in religion in this question. Do not bring in culture, do not bring in other things and say that Hindu society will fall down. I say Hindu society has never been so weak, Hindu culture has never been so weak, nor Hindu religion, that it will fall down, if this Act or that Act is passed. It is too strong for that.

And then again, it is not our claim alone that we have come from God. There have been six great civilisations and every great civilisation claims that it has come from God. The Muslims say it, the Christians say it, the Japanese said " I am the son of God ". The Chinese Emperor wrote in 1559 to George

Ill a letter that the Chinese potentate comes from God and his territory shall have nothing to do with English commerce or be tainted by foreigners. But forty-nine years later there was a war by the Englishman upon China and the former accepted the opium dealer. Where had the land of the son of God gone then ? Where was that son of God when there was the cannon mouth of the Englishman ? Even the Englishman claims such things, that it is the whiteman's burden that he has been sent to Africa and India to civilise other human beings; that he has been destined to do so. But such claims are false, as false as it is for us to claim that ours is the only monopoly of truth. I am a Hindu and I am a Brahmin, and I am proud of being a Hindu and Brahmin, but I do not like to claim that the truth is my own monopoly, that the truth came to my ancestors and not to anybody else. If God gave the truth only to my ancestors and to nobody else, then it was unjust, and for the matter of that also foolish to have created other people on this earth. So my only request is—and I make it with all the humility and respect of a Hindu child for the elders—please do not bring in religion, do not count upon culture. Do not say Hindu society will come down. But please accept it on the basis of an intelligent view, a common-sense view, a scientific view, of law as prevailing in the modern world. The law of every country is the outcome and result of the economic and social conditions of the country as well as the expression of its intellectual capacity for dealing with those conditions.

Now I come to the next point. We have been for a long time separated from the world as such. As I said there were six civilisations and the Chinese Potentate, the Japanese Emperor, the English King, the Czar of Russia, Babar of India all of them claimed that they came from God, all because

Pandit Lakshmi Kanta Maitra : To what particular clause of the Hindu Code is my Hon. friend referring ?

Shri Krishna Chandra Sharma : I am referring to your remarks. Well, as I was saying, they all said they were supreme and they were the most mighty, and that was because they could not understand other people and they had no knowledge of them. Therefore they said, theirs was the best religion. But now with the aeroplanes, through the ships, through literature and the printing press and publication, you have come into contact with all the people of the world. You know other people and you understand them. You are influenced by them. Look at the desk of your child and there you will find the works of Bernard Shaw and Shakespeare. You do not find *ganga lehri* there. But you don't think the child is not a Hindu because he has only Bernard Shaw and Shakespeare and Pearl Buck on his table. So every thought and action affect and influence all the countries of the world. You cannot have any law whatsoever which is divorced from the influence of others, it has to be

dynamic and then it will help the people to a great future. Divorced from that, separated from that, they are weak. So let us have the law on the scientific basis. In times past there might have been prejudices and there might have been different customs, and there might have been any other thing. But today religion is a matter of scientific study. You cannot say that everything you believe is religion. Nobody is going to accept it. Religion is that which takes man from human stage, from the comprehensive human life to the region of Godhood and in raising humanity from humanity to Divinity, there are certain accepted principles from which you cannot escape. So in this twentieth century, neither is everything religion nor is everything culture nor everything the basis of society. There are certain well accepted principles, accepted by the world at large, by the jurists, by the religious teachers and all the great men of the world as the basis of society, as the basis of culture and as the basis religion. Everything that you speak and believe is neither religion, nor culture nor the basis of society.

My friend asked me to what I was referring. In Mulla's Hindu Law the first page deals with castes. It says there are four castes in Hindu Society. The second paragraph deals with whether *Kayasthas* are *Sudras*. The third paragraph deals with the question whether *Marathas* are *Sudras* or *Rajputs*. I put it to you in all humility: Is there anything of culture or religion in it ? Religion takes from the universal love to the Divine bliss and culture means light and sweetness. The division of a people into castes is no culture and much less has it anything to do with religion.

An Honourable Member: Only agriculture.

Shri Krishna Chandra Sharma : Agriculture will give you food; your view is a thing that will bring you down.

Now, I shall put to you the sources of Hindu Law. I think my hon. friend is a lawyer and he will appreciate it. The sources of Hindu Law are, the *Shrutis*, the *Smritis*, customs having the force of law, commentaries, and then the judicial decisions of the Privy Council and the High Courts. So far as the *Shrutis* are concerned, nothing is known about them. I have quoted Jayaswal who is the greatest authority on ancient polity and he is of the view that what is stated in the *Smritis* is only a codification of the custom and usage prevailing when the *Smritis* came into existence. The *Smritis*, as I said, differ on the same point. The commentators are accepted; but they are accepted as authority not because they tell you what the law was, but because they tell you something that must have been in existence. According to the principles of Hindu Law, custom and usage override the written text of the law, and they are to be accepted. Then comes the case law of the Privy Council and of the High Courts. How was this case law made ? Up to 1868, the condition was

this. The Hindu Law was administered by English judges with the assistance of Hindu Pundits. The institution of Pundits as official referees of the courts was abolished in the year 1868. Your case law is the result of the English man's decision with the help of the Pundits. Now, I tell you, when the country is ruled by an aggressor, when the country is ruled by an invader, no self-respecting man much less a learned man, will sit beside him. Therefore, whatever class of Pundits were called, they were demoralised creatures; they were not representative of Hindus. Do you mean to say that you do not want to change the Hindu Law because Hindu Law is something sacred ? What is that Hindu Law ? Decisions of Englishmen given with the help of or at the suggestion of demoralised creatures. That is your Hindu Law. What is the sacredness behind it ? That is my point. You judge this present law on its own merits; judge the present code according to principles of jurisprudence. In accordance with principles a law is judged as necessary and good.

Coming to this Code, the first thing that it deals with is marriage and divorce. If you go through the different small Acts passed during the last two or three years, you will find that this is a mere codification and nothing new. You can have the sacramental marriage; you can have the civil marriage. You find Hindus marrying in different castes, even beyond the Hindu fold and they remain Hindu all right; you do not say they are outcastes. Therefore, what is prevailing, what is a fact already, you take as the law. I do not think you are changing anything. With regard to judicial separation and dissolution of marriage, look at the grounds : either party to the marriage was impotent, the husband is keeping a woman or a concubine, the other party has ceased to be a Hindu, either party is incurably of unsound mind, either party is suffering from a virulent and incurable form of leprosy. Now, I put you a simple question. Is there anything in any law, in any text of Hindu *Shrutis* or *Smritis* which bar these conditions ? I have been looking into the Manu Smriti and I have found nothing repugnant to this. If my hon. friends find anything, they may bring an amendment. I am not against the *Smritis* and I am only proud of them. I have gone through the texts; I have not been able to find anything in them repugnant to this. If these conditions are in accord with notions of social justice as it is prevalent, I see no reason why you should not accept them. Are you an enemy of women? Are you an enemy of your mother and daughter ? Our mother is a respected being and our daughter is part of our life and blood. Is that not so ? Why then do you raise the cry that this is something which will bring down Hindustan and that the Hindu society will be crushed to pieces. There is nothing in religion, there is nothing in culture, there is nothing on the basis of Hindu society that is against these conditions and repugnant to them.

Take the case of adoption. My own feeling is that at this stage of evolution of our society, it is unnecessary and it has no meaning. There is a text in Manu on which this adoption is based : that a sonless father has no region in Heaven. The basis of that text was this. At that time, the Aryans were facing the aboriginal tribes or some people who were non-Aryans. Therefore, they naturally wanted their number to grow. They put it this way. A Hindu has three " *Rinas* " : *Rina* to God, *Rina* to the *Rishis* and *Rina* to the *Pitras*, that is the race. That is, to carry on the thread of the race. To carry on the thread of the Race was necessary at the time Manu wrote the *Smritis*. It is not necessary today. Today the cry is not that we have not got children; on the other hand, the cry is that we have not got food and cloth. The fewer we are, the more of these things we will have. Therefore, at this stage, I do not see any reason for adoption. As to going to Heavens, the meaning behind the oblations and all these things was to keep up a spirit of charity in our society. Human society has grown so well and so organised that there is enough scope for charity and social service and generosity in this world rather than giving something to our ancestors who have gone beyond this world. It is better to work in this wide world. That is an institution which has no meaning. The meaning that it had has no application in the present day society. So far as secular purposes are concerned, that if a son is adopted he will serve the old man or old woman, I think it is of no use. Today, there are so many sick homes, hospitals and other homes. If you have got no property, it is useless to adopt a child and nobody is going to serve you simply because you have adopted him. If you have got property, there are enough institutions to help you in old age. My contention is that this institution of adoption in the present state of our society has no meaning whatsoever.

Regarding minors and guardians, I don't think it has made any departure from the Hindu Law as it is. Regarding law of Succession, I am sorry I have not been able to see much about Succession and I can't say with confidence whether the present system of Succession is right or wrong. One thing I will say *viz.*, there is nothing wrong in principle to make a daughter co-heir with the son because under section 3 of the Women's Property Act, 1937, the mother gets a share along with the son. What objection there is on earth to a daughter inheriting along with the brother ? If mother can inherit along with son, there is no reason why the daughter should not inherit with the brother. Pandit Bhargava raised the objection that the sons-in-law will come and create trouble in the house. If two brothers do not create trouble why should the son-in-law create troubles. Go to Cannought place and you will find that the fate of the husband is to take the coat of the wife behind and pay the bill; and so how can a husband create trouble when the wife does not want it.

An Honourable Member: That is in Northern India.

Shri Krishna Chandra Sharma: That is the evolution of man. The evolution of humanity is like that. Where are your moustaches ? It is an ordinary biological principle that the female cells were developed and separated later and woman was better evolved. She is fairer, more tender and more beautiful. It is the way of progress to go to finer and more beautiful life. If you are otherwise inclined, I think you are less than human.

Then I come to the joint Hindu Family. I have looked into authorities on this point and all great authorities agree that Hindu Custom came into existence when the state of Society was pastoral. For that it was necessary to have Joint Hindu Family system. At present there are a number of laws by which we have done away with the Joint Hindu Family property conception. This was made at a time when there was not much trade and commerce. A farmer looks to the cow not as something worth 100/- but as something—a living thing associated with him in life—something sacred. So he takes the cow as it is and would not like to get the money from the son if the son goes away from the family because the cow is something sacred—that is how we regard the cow as Mother cow.

Pandit Lakshmi Kanta Maitra: Is there any father cow ?

Shri Krishna Chandra Sharma : Times have now changed and therefore that question of Joint Hindu Family does not hold good and is not to be regarded as so essential and therefore sacred as it was when Aryan society was first established in India and these customs came into existence.

The second point is that this is not applicable to agricultural lands. So far as agricultural lands are concerned, new acts are coming into existence and succession in those would go on the same basis.

With these words, I commend this Bill for the acceptance of this House.

Shri B. M. Gupte (Bombay: General): Sir, I rise to accord qualified support to the measure before this house. This does not mean that I am opposed to many of the reforms that are proposed here. On the contrary I am prepared to say that they are in the right direction subject to certain modifications and adjustments. Adjustments are necessary. I will give only one example. The abolition of customary divorce is bound to entail much hardship to rural population of Bombay province because among the population there the practice of divorce is widely prevalent. In Bombay we have a Divorce Act but even that Act makes an exception of Customary divorce. I therefore say that certain adjustments are necessary. The provisions with regard to divorce, marriage and maintenance and minority—these may be proceeded with and made into law. I have no objection about them but I can't lend my support to the enactment of the provisions embodied

in parts 5, 6 and 7. They make fundamental changes. In fact they unsettle the entire law of inheritance of the Hindu Community. therefore the question arises whether this is the time quite opportune for such general unsettlement. We are in the midst of a political and economic situation which is characterised by unrest, turmoil, misery and disruption and therefore the question is whether we should complicate the situation still further by introducing revolutionary changes which affect the entire social structure of the country. Our Prime Minister often insists, and rightly insists, that in this emergency first things should come first and this is not the time for things which bring disruption. If we apply this test to this measure, what would be the result ? I ask, are these so pressing, that we must face the risk of intensifying the complexity of the situation which is already difficult enough ? The answer is obvious. The Hindu Law has been in existence for years and if there is to be a revision of it or its codification there is no urgency at the present juncture. This is not the opportune time for such a general unsettlement of the existing law.

It is our well known experience that social legislation which is in advance of public opinion defeats itself. In this I include not only the vocal urban section of the population but also the teeming millions in the villages. We have to see whether this legislation is in advance of public opinion. We have the experience of the Sarda Act. In spite of its strict provisions the law became a dead letter in its enforcement. In this case it will not become a mere dead letter. The enactment of the provisions laid down in parts V, VI and VII will bring about far more mischievous results than being a mere dead letter.

In the villages there are the *goondas* who because of their detailed knowledge of the law try to exploit the ignorance of the villagers and dupe them into protracted litigation. This evil is already rampant. The law of succession or survivorship, owing to long usage and familiarity is already known to the villagers. The result will be that we shall be affording one more source for the village *goondas* to exploit the ignorance of the villagers. I therefore want to emphasise that though I am not opposed to reform, this is not the time to introduce a measure like this.

Whatever decision we may take here or in the provincial capitals in the present condition of illiteracy of the masses, it is difficult to carry such legislations to the villager. We have already the experience of the Grow More Food Campaign. In my province the Government is offering numerous concessions and facilities but the villager does not know them at all. What will be the result of this law ? The village *goonda* will be able to exploit the ignorance of the villager in this matter.

In one respect the situation in the villages will be worse than that in the urban area. According to the present constitutional position this law will not affect agricultural land. It will mean that there will be two sets of heirs for the property of the deceased agriculturist. His agricultural land will go to one set of heirs, while the rest of his property will go to another set of heirs. This is bound to make confusion worse confounded. We are enacting this legislation with a view to secure uniformity but instead of uniformity and simplicity there will be complexity and confusion. To avoid such confusion it would be better that we wait till the new constitution is ushered in. Let us not be in a hurry. Personally I feel that this measure can be introduced and pursued after one or two general elections have taken place. Those general elections are bound to quicken the political consciousness of the villager and bring him into more effective contact with the working of the legislature. He will then be in a better position to influence legislation which vitally affects his interests. Therefore I submit that till such time comes, till there is some quickening of political consciousness among people, let us not thrust the legislation upon them.

I finally appeal to our enthusiastic friends who are the ardent champions of this legislation that by our over-enthusiasm let us not defeat our own object.

Shri A. Karunakara Menon (Madras : General) : Sir, I rise to support this Bill, so far as it goes, with all my heart. It will no doubt go a great way to consolidate the Hindu society. The Hindu law as it exists today is only a conglomeration of several systems of law. We have declared in our Constitution that it shall be our aim to frame a uniform civil code applying to the whole territory of India. This Hindu Code will go a great way to assist in the evolution of this uniform code of law. I wish some Muslim friends introduce a law to codify the Mohammendan law also. The Christians have already a codified law. After these three codified laws are brought into existence it will be easy to pick out the uniform provisions of these three codes and try to accomplish the object that we have aimed at under the Constitution. This Bill is also welcome inasmuch as it will extend the rights of women.

But I have some complaints to make. This law is not as progressive as it ought to be as the people wish it to be. It is far behind in several respects the *Marumakhattayam* law that exists in my part of the country. We should not be dragged down from the position we are in at present. If amendments could be introduced in the Bill and if it could be made possible for us also to make use of the Bill, none would be more happy than us.

The provisions of the Bill as they stand at present have been conceived at from a patriarchal point of view. The provisions of the matriarchal system of law, wherever they are progressive, could be introduced into this Bill and that

point of view has not been taken into consideration at all. It might be pointed out that the original Bill as drafted in 1947 excluded the *Marumakkattayam* and the *Alia Santhanam* law from the operation of all the important branches of law covered by it. I will point out why this Bill is not sufficiently progressive and why it should be made more progressive.

Marriage under *Marumakkattayam* law is a purely mundane affair. There is no religion in it. There is no sapindaship or sacrament in it. This Hindu Code Bill recognises only two kinds of marriage— sacramental marriage and civil marriage. Civil marriage is common and we have no objection to it. We are prepared to abide by provisions relating to it.

That the authors of the Code were under a misapprehension that even the *Marumakkattayam* marriages were sacramental marriages is clear from a reading of clause 51 of the Bill where they say that even the Malbar marriages are sacramental. That is the basis on which they have framed that clause. In Malbar marriage has nothing to do with religion. Clause 51 says:

" Nothing contained in this Part shall be deemed to affect any right conferred by the Madras *Marumakkattayam* Act, 1932 (Madras Act XXII of 1932) to obtain the dissolution of a sacramental marriage, whether solemnised before or after the commencement of this Code. "

There is another direction in which we would like to get an amendment of this Bill in so far as we are concerned. Our law allows us to marry our father's niece or our maternal uncle's daughter. In fact many of us consider it a privilege to marry our uncle's daughter or our father's niece. But this is interdicted by the provisions relating to sapindaship and prohibited relationship. This encroachment on our right is not likely to be viewed with favour by the people of my part of the country.

In regard to judicial separation or restitution of conjugal rights, there are no provisions at all in our law. Either a marriage exists or it is got rid of by means of a divorce. There is no middle course. The provision for divorce is very simple. Either of the aggrieved parties goes to the nearest court of civil jurisdiction and puts in a petition with twelve annas stamp on it praying that " for such and such reasons we are not able to pull on together and therefore a divorce may be granted ". For a period of six months that petition is kept pending. Perhaps the authors of the law wished to see whether a reconciliation was possible within this period of six months. After this period of six months, if nothing took place divorce is automatically granted. This provision is simple and from clause 51 of the Bill it is clear that it has attracted the attention of the framers of the Bill because this provision for divorce is found retained in the Bill. But I do not know why the benefit of this provision is not extended to all other Hindus.

The provision for dissolution of marriage has infuriated some of the members of this House. Even though the provision for divorce has been in existence in Malabar since 1932, I believe, not even a dozen divorces would have actually taken place. This proves the truth of the statement made by a learned author—1 mean Bertrand Rusel—that " the easiest divorce laws by no means produce the greatest number of divorces ; wherever there is divorce, adultery is scarce and morality is higher".

Coming to adoption, the provisions contained in this Bill are very unsatisfactory when compared to what prevail in our part of the country.

According to this Bill, adoption is a religious matter, but among the *Marumakkattayam* people it is a purely secular matter. Under the Hindu Code only a male or his widow could adopt a person, but according to our law any person, whether male or female, could adopt a person. Whereas only a male could be adopted under Hindu Law, males or females could be adopted under our law. Whereas only one person could be adopted under Hindu Law, we can adopt one person, two persons or even one whole family, at the time of extinction of our family or as heirs to our property. So there is a lot of difference between the Hindu Law and the *Marumakkattayam* Law in this respect. The reason why these things have not been taken into consideration in framing the Bill is, according to me, that the whole perspective has been entirely patriarchal and not matriarchal also. If that point of view also had been taken into consideration then many of these differences could have been resolved or reduced.

In regard to joint family property, the substitution of tenancy-in common for joint tenancy is one of the most important features in the Bill. I welcome this provision. But this part of the law again has been framed from the patriarchal point of view only. Read any clause under Part V—I am not going to trouble the House but I only wish to bring it to the notice of the Hon. the Law Minister—read any clause in part V and you will find that it is inapplicable to the *Marumakkattayam* people, though the Hindu Code Bill is intended to apply to them also.

Clauses 86, 87 and 88 will show that none of them could be made applicable for the tenancy-in-common being introduced into the joint families that exist in Malabar.

With respect to inheritance, I do not know why mother should not be made an heir along with son and daughter. Suppose a man dies— suppose I die. My natural love and affection induce me to see my mother who has brought me up and who has taken interest in me all through my life, an heir to my property. Here what I find is that the mother has been omitted in Clause 1.

My second complaint is why the son of a predeceased son or the son of a

predeceased son's son ought to be introduced in Class 1. He ought to come in Class II. It is revolting to us to make them preferential heirs in Class 1. If you ask anyone in Malabar as to whether he would like his property to go to his son's predeceased son's son, or his son's son even, or to his sister or sister's children, he will certainly say that even in preference to his brother it should go to his sister and sister's children. So I say that the rank given to sister and her children in Class II of the Seventh Schedule ought to be raised than what has been given there. Sister and sister's children come very low ; in Schedule VII, they come only after son's daughter's son, son's daughter, son's daughter's daughter. It is after all these persons that we find even brother and sister appearing as heirs. I do not know why promotion ought not to be given to brother and sister who were born of the same womb. Natural love and affection should certainly induce us to give brother and sister a higher rank than what has been given to them under the provisions relating to inheritance.

[At this stage Mr. Deputy Speaker vacated the Chair, which was then occupied by Shrimati G. Durgabai (one of the Panel of Chairmen)].

Looking at the question from all these points of view, it will be seen that the whole Bill has been looked at only from the law that is prevailing in the other parts of the country than Malabar—which no doubt is certainly followed by the largest number of people—but the matriarchal system of law has not at all been taken into consideration in framing this Bill. Therefore I feel that this Bill is not sufficiently progressive either with respect to the rights of women, which we all desire so much to be given to them, or from the general point of view.

We are very anxious to be brought within the scope of this Bill. We do want uniformity. I am one of those who wish, and the people of my part of the country also want to see, that there is one uniform law existing for all the Hindus in the country. But at the same time it should not be made so revolting or made impossible for my people to follow the law, or even if they do so to do it with a certain amount of reluctance. It ought to be made attractive. My submission is that in framing the law the matriarchal system of law has also to be taken into consideration. I submit that proper amendments might be introduced to attract us also to come within the scope of the Bill. If for any reason the two systems are so divergent that it is impossible to introduce amendments in the Bill so as to attract us also within the scope of the Bill, my appeal to the House is that we may be left alone, that we may be allowed to follow our own law which stands on a higher footing of love and affection than the Hindu Code Bill that has now been introduced in this House. According to me this Hindu Code Bill is not a secular measure, it is not a rational measure;

religion still pervades throughout the Bill. The Bill ought to be entirely a rational one. I would have had no objection if the whole Bill had been framed from a natural outlook, an outlook entirely divorced from religion. If a Bill like that is introduced, our people would be too glad to follow it. What we notice is that the Bill as it is framed now is religious still to a high degree; though it has been watered down, it is not yet sufficiently secular. I don't know why in marriage, adoption and inheritance, religion ought to intervene, why the provisions relating to them ought not to be made more secular as they prevail today in our part of the country. There is no reason why we who follow a system which has nothing to do in all these mundane matters with religion, should be roped into this Bill in which religion plays a prominent part.

Mr. Chairman : There are only ten minutes left. I want to know if any of the Members will finish his speech in ten minutes.

Some Honourable Members rose—

Shri Sita Ram S. Jajoo (Madhya Bharat) : Madam, I will finish my speech within ten minutes.

At the outset I want to make it clear that I am wholeheartedly in support of the present Hindu Code Bill. It is with a hesitant heart that I am standing here because I feel that almost all the Members belonging to the older generation were speaking against the Hindu Code Bill. I don't challenge their hearts, but so far as the Hindu Code Bill is concerned their hearts seem to be older or staler.

Shri M. Tirumala Rao: May I say that ladies of the older generation also are supporting you ?

Shri Sita Ram S. Jajoo: Yes, because they are progressive, because they want to progress. In the words of my friend Mr. Krishna Chandra Sharma, they are more progressive and going forward whereas the men are going backward. Any way, I am concerned with the Hindu Code Bill as it stands today.

Madam, I would not have spoken but for the fact that I can represent the views of the younger generation here, and I can confidently say that the younger generation in the country stands by the Hindu Code. Much ado has been made about the fact that this Bill has not been circulated for public opinion in the Indian States. I want to say that there have been many Bills which we have passed in this House, but at that time nobody raised his little finger and said that those Bills were not circulated for eliciting public opinion in the Indian States.

Some Honourable Members : But this is such a controversial Bill.

Shri Sita Ram S. Jajoo : There have been so many controversial Bills. The question of Sirohi was most controversial but the States people were not

consulted on it.

Shri Gokulbhai Daulatram Bhatt (Bombay States): Madam, there was no Bill connected with Sirohi.

Mr. **Chairman** : May I request hon. Members to allow the speaker to go on uninterrupted ?

Sardar Hukam Singh: Is it not for the elders to correct if the younger generation goes astray ?

Shri Sita Ram S. Jajoo : They are definitely in their rights to control and guide the younger generation, but that must be towards progress, it should not be a retrograde step.

An Honourable Member : Our experience extends upto 80 years.

Shri Sita **Ram S. Jajoo** : The experience of 80 years may be there ; but the experience of the Father of the Nation, Mahatma Gandhi, is also there. There are volumes of books containing the articles by him from time to time in favour of the elevation of the Hindu women. And so far as the Hindu Code is concerned, I have heard from many of the staunch opponents that they won't mind if the whole Code is passed excepting the provision regarding inheritance and the sharing with daughters and sisters. It has been opposed mostly by the community, to which I also belong, the Marwari community. But say that the Marwari youths are for the Hindu Code Bill. If we say that the older people are there and their experience is there, Mahatma Gandhi in his autobiography has written that it is a most pitiable sight to see the Hindu wife..

Pandit Mukut Bihari Lal Bhargava : You can't exploit Mahatma Gandhi's name.

Shri Sita **Ram S. Jajoo**: Perhaps you might have exploited his name much more than what I have done. I have just started my life and I had no opportunity of swearing by the Mahatma's name whereas among people who are old and who have got grey hair there might be some who might have exploited his name hundreds of times.

Madam, Mahatma Gandhi writes that so far as the position of Hindu wives is concerned, it is most pitiable. He says that if the master is annoyed with a servant, the servant may leave his master, if one is annoyed with one's father he can't demand partition, if a father is annoyed with his son he can ask him to get out, but so far as the Hindu wives are concerned they cannot go anywhere. If that was the case with Kasturba at the hands of the Mahatma, what would be the position of women at the hands of ordinary human beings like us ?

So far as the Constitution is concerned, we have agreed that there is equality of sex, but here we are afraid of granting that equality to our women folk, to our sisters and daughters. You can adopt a boy from a family simply

because he also happens to have the same *Gotra* or the same surname, but you are not prepared to tolerate your own daughter or your blood sister simply because she happens to be a female. That is the position.

Much ado has been made about the Bill by saying that it is an insult on the Hindu religion. I want to ask this of my friends. The Hindu religion is very adjusting and accommodating. It has adopted itself to changing circumstances from times immemorial. The very fact that there are 137 or 138 *Smritis* is evident to this statement. If there was a fixed law and no change suggested or expected in the Hindu law, then why are there 138 *Smritis* ? And why we cannot have one more *Smriti*, codify and have a new Hindu law ? We can have in it all the good things of those *Smritis* together with all the good things which the modern times and the scientific developments and the social progress demand. What is the harm if we codify all these into one law ? The very word *Smriti* indicates whatever is written from memory, the word *Shruti* indicates whatever is heard and written.

It is nowhere stated that they were written by a particular *Rishi* or a particular *Muni*. So, I don't think there should be any hesitation in having this Code nor should anybody feel that his conscience will be killed if this Hindu Code is enacted. We have always been speaking from the political platform about freedom. Political freedom has been achieved. We have achieved independence but we have also to see that the social evolution of the country also takes place. If we want the social order to change, I say this is the time for it. We have to prove it by our actions, not by words. We must see that the whole social order is changed. As regards reform, I may say that even the late Raja Ram Mohan Roy had to face opposition, many other reformers had to meet with opposition, some of them died an unnatural death at the hands of their opponents whom they wanted to help, whom they wanted to elevate and to whom they wanted to bring salvation. Here we have got our leaders who are certainly with us. After the Prime minister's speech on the opening day of the session, I don't think there is anything for arguing here or for fighting over this issue when he said that he was for the greatest common measure of agreement if it could be arrived at. If we are prepared to have a compromise with others then I feel this will not become a progressive measure, it will lose its charm. But still I have more faith in the wisdom of our Prime Minister. I feel he is much more wise than I can be or my young friends can be. I have faith in him. If he wants compromise, or if the Government wants compromise, let there be compromise, but so far as young people are concerned, we do not like the compromise. But we certainly have faith in our leaders and we shall obey their commands.

Pandit Lakshmi Kanta Maitra: But none of them are here.

Shri Sita Ram S. Jajoo: If they are not here, the Hon. Dr. Ambedkar is here. He is the sponsor of the Bill and he is doing it on behalf of the Government. It is no use cursing this Government. After all, if we go into the history of this Bill, we will see that it was brought by our predecessor Government (*Interruption*).

Madam, I would like to speak for about ten minutes more, because there have been interruptions. If you so desire, I may continue tomorrow. I will not take more than ten minutes.

Mr. **Chairman** : The hon. Member is requested to close his speech, because he has assured me that he will take only ten minutes.

Shri Sita **Ram S. Jajoo:** But you will appreciate my difficulty, Madam. I have been interrupted so much. I would like to speak for ten minutes more tomorrow, if you do not mind.

Mr. **Chairman** : May I know whether the hon. Member can finish his speech within three minutes more. I will give him minutes three now.

Shri Sita Ram S. Jajoo: I know. Madam, I have given an assurance. If you wish, I may sit down just now. But I thank you for giving me three minutes more.

Now, I was saying that Dr. Ambedkar is here. He will certainly convey our views. He is in charge of the Bill. It is no use cursing and blaming the present Government. After all, if we see the history of this Bill, this Bill was brought by our predecessor Government—a foreign government. At that time, we did not have the guts to fight it. Whenever social measures were brought forward by the foreign government...

An Honourable Member: Don't worry about history.

Shri Sita Ram S. Jajoo : I have to look into the history certainly, but let me proceed with my speech just now. When the British Government brought certain measures which affected the Hindu law, we accepted them at that time, because they did not touch the purses of the moneyed people—the capitalists. Here we feel the pinch, because it touches our pockets. We male members of this House are in a huge majority. I do not wish that the tyranny of the majority may be imposed on the minority, the female members of this House. The ladies in the country in general are illiterate; so we should not exploit them. A big tirade of propaganda is being carried on that this Bill aims only at one thing and that thing is divorce. All ladies are persuaded or dissuaded or influenced or canvassed by telling them that their husbands are going to divorce them after the Hindu Code is passed. This kind of misinterpretation of the provisions of the Hindu Code is going on. I want to tell all these people that there will hardly be a single man who would like to divorce unnecessarily ; similarly, there would hardly be a single Hindu wife

who would like to divorce unnecessarily. There is enough good reason and sense in the courts, and the judiciary will definitely look into the whole case and see that justice is meted out. This is all I have to say.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Tuesday, the 13th December, 1949.

HINDU CODE—*contd.*

Mr. Deputy Speaker: The House will now proceed with the further consideration of the Bill to amend and codify certain branches of Hindu law.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, before dealing with the different aspects of the Bill as it emerged from the Select Committee, I should like with your leave to make a few general observations. I may at once say that I do not belong to the school which is against any legislative interference or change in matters of Hindu Law. Law by its very nature cannot be static; it must keep pace with the progressive tendencies of the age, if it is to be an instrument and measure of social progress. Our ancients were quite alive to this function of law in society. The *Smritis* as well as the great commentaries on the *Smritis*, bear eloquent testimony to this function of law in society and the need for changes from time to time. The commentaries which are treated as authoritative interpretations of law in different parts of the country merely give concrete expression to the social tendencies at work at a given time, but in the modern age with duly constituted Legislatures functioning, no jurist counsel can effect a change in the law by a mere process of interpretation. This function to some extent but within a limited sphere has been discharged by the Courts, the highest tribunals in India and the Judicial Committee of the Privy Council, during the last one hundred years or so. It is not, however, the normal function of Courts to effect a change in the law but only to interpret the law though in the process of interpretation it may effect imperceptible changes by distinguishing or extracting principles from previous decisions or from Hindu law texts.

But by its very nature, judicial function is restricted in its operation. It cannot be gainsaid that there is also a danger in the Judge consciously or unconsciously assuming the role of a legislator. A particular Judge or a Bench might approach the consideration of a question from a conservative or orthodox point of view, another Judge might utilise his judicial function for any pet theme of social reform. The judgments of the highest tribunals in this country as well as those of the Judicial Committee of the Privy Council during its long association with India, bear witness to the above statement. At the same time, there is no gainsaying the fact that the decisions of Courts to a large extent have prepared the ground for legislative intervention. While this need for legislative intervention is apparent, this Assembly in undertaking any

legislation of this kind cannot altogether ignore certain rooted conceptions in regard to marriage, family law and rights of succession. Change is inevitable and is part of the organic law of society, but change does not mean striking at the roots or foundations of society.

Bearing all these aspects of law reform in mind, I should like this House to approach the consideration of this Bill. There is no subject in which every man and woman in this country is interested more than the Bill now under consideration by the House. That makes it all the more incumbent upon each one of us, however highly circumstanced or lowly circumstanced, to tolerate difference of views and to bring to bear a cool and dispassionate judgment in the larger interests of the well being of the people of this country. In that sense and to that extent this cannot be treated purely as a Party measure or as a matter of confidence.

First, with your leave. Sir, I shall take the Chapter relating to marriage and divorce. While dealing with this Chapter, it is well to remember that already great inroads have been made into the marriage law by the various Acts of the Indian Legislature. The latest of such Acts was the Hindu Marriage (Disabilities Removal) Act of 1946 (Act XXVIII of 1946) by which it has been enacted that a marriage shall not be invalid by reason only of the fact that the parties thereto belong to the same *Gotra* or *Pravara* or belong to different castes or subdivisions of castes. The Madras Legislature -has recently made monogamy compulsory and some of the Provincial Legislatures have already made provisions for divorce. A change has also been made in regard to the law relating to the age of consent to marriage. If we approach the consideration of the -Bill from this point of view, the changes effected in the Bill are by no means so revolutionary as they may seem at first sight. The substantial changes in the provisions of the original Bill as pointed out by some Members of the Select Committee relate to the incorporation of certain provisions relating to restitution of conjugal rights, judicial separation, alimony, custody of children, jurisdiction and procedure of Courts.

While on the provisions of the Bill, I should like to mention one important point. The distinction sought to be made between sacramental marriage and civil marriage is more apparent than real. It is difficult to follow the provisions of the Bill in this respect, because I find that in regard to divorce, in regard to restitution of conjugal rights, in regard to right of maintenance and obligations of the marriage the provisions are exactly the same both in regard to what is termed " Civil Marriage " under the provisions of the Bill and what is termed " Sacramental Marriage ". The Bill introduces a distinction between what is called " prohibited degrees " and other kinds of disqualifications in regard to sacramental marriage. In regard to sacramental marriage, provision is made

that *sapinda* relationship as defined in the Bill will be a ground for disqualification, whereas in the case of what is called a " Civil Marriage " it is only prohibited degrees that are made a ground for the marriage not being effective. At the same time, I am unable to follow the metamorphosis provided for in the Bill that even if the parties go through a sacramental marriage, it is open to either of the spouses to convert it into what is called a " civil marriage" under the provisions of the Bill. If really this distinction serves any purpose at all is a point which may be considered by the Hon. the Law Minister before the final passing of the Bill.

There is no distinction in regard to the rights of offspring, rights of inheritance, the obligations between the spouses and in every other matter. The position is exactly the same in regard to a civil marriage as in regard to a sacramental. Possibly, the idea is to satisfy the sentiments of some parties by making some provision for what is called " sacramental marriage ". If that is the real object, then you ought not to make a provision for an easy change of sacramental marriage into a civil marriage at a later stage. Either have the one or the other. If, for example, you want to draw a distinction between sacramental marriage and civil marriage, have it ; let it be quite clear and definite : Normally, certain ceremonies are indispensable for sacramental marriage. Certain formalities need not be gone through in the case of what is called " civil marriage ". From the point of view of a pure lawyer, I fail to see any real distinction between a civil marriage and a sacramental marriage under the provisions of this Bill. I do not go to any root ideas of the Bill, but I merely place it for the consideration of the Hon. the Law Minister.

Then again with regard to prohibited degrees of relationship, modern eugenics is against the idea of people related to one another marrying. At any rate, there is a large body of opinion in favour of this doctrine. Under those circumstances, are we advancing or are we retarding progress so far as this provision is concerned ? At least so far as this part is concerned, I think our ancients anticipated modern ideas in prohibiting certain people from marrying. I ask you: why take retrograde step in the name of progress and in the name of advanced ideas and civilisation ? I certainly realise that there need not be any prohibition in regard to distant *sapinda* or people who have the same *pravara* or the same *gotra*. But that stands on a different footing altogether. Where there is near relationship, why relax the rule ? I have been recently reading in newspapers and periodicals a good deal of discussion as to the advisability of near relations marrying one another. This is one aspect which I know the Hon. the Law Minister, as a student of science and of history, will certainly consider. This is opposed to the religious sentiments of the people. If scientific ideas, if religious considerations, if sentiments of the people have all

to be taken into consideration, then there is no point in relaxing that rule. It is not, of course, consistent with the well being of the society. If in the interests of the future generation, if in the interests of the well being of our people, if in the interests of the progress of the race, you must promote marriages between near relations, by all means do so. Let us take a bold stand; let us take a clear stand; let us take a determined stand in regard that matter. I do not want any shilly-shallying in regard to what may be regarded as a question of fundamental principle. Either adopt the ancient principle or adopt a more rational or modern principle according to your ideas. But personally, I would very much prefer the old rule being retained. Let me be quite clear. In regard to particular communities where, for example, certain customs have been prevalent in some parts of India, you have already provided for it in another clause. But the general rule should be to prohibit marriage between *sapindas*. In this respect, the move is not in the right direction.

With regard to the law of divorce, in trying to bring about a uniformity of law there is no point, as Sir Tek Chand has pointed out in his memo, in imposing special restrictions upon communities and classes of people among whom restrictions do not obtain at present. I know that in parts of South India divorce by mutual consent in the presence of the village headman or the Panchayat is still prevalent as in other parts of North India. After all, it looks as if divorce is to be the essence of the law of marriage according to a certain school. But must you think of divorce before you think of the marriage? If that is the running idea and if you want to give encouragement or at any rate provide an easy divorce, why provide for law courts, divorce courts, an appeal court with three judges sitting, etc. when the communities affected have got hardly enough to eat? I should think that is not a move in the right direction. In so far as any divorce is permitted according to the custom of the community in particular castes, it should continue; but in the interests of uniformity you need not make the divorce more expensive. It would certainly benefit my profession and I am not at all against it. But I know my hon. friend Dr. Ambedkar very well and I have no doubt he will consider all the aspects of the question before coming to a conclusion on this particular question.

In regard to judicial separation, I recall to mind a very interesting debate in the House of Lords some years ago in which Lord Birkenhead took part. Very eminent lawyers and some of the greatest jurists of the day took part in the debate. There was a certain section of the people who took a strong view to the effect that judicial separation is another name for legalising concubinage. I would rather prefer a clean case of divorce to this judicial separation continuing. If it is a question of providing maintenance, if it is a question of seeing that the obligations are discharged that the wife is not starved or that

you do not discharge your marital obligation, while continuing to be man and wife, provision is made in the Bill in regard to that.

Why all these complicated provisions of the English law in regard to alimony, in regard to judicial separation, in regard to divorce and restitution of conjugal rights ? Is it necessary to have so many detailed and complicated provisions is a point which is worth consideration.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : They are necessary in the interests of the progress of the country.

Shri Alladi Krishnaswami Ayyar: I am not giving one view or the other in regard to that. You may have your decided views on that matter. But I have no decided views on the subject.

Therefore, I think we have to take the modern trends of thought into consideration and not merely go upon antiquated ideas prevailing in England. Even in England within the recent years there has been a great change of opinion in regard to marriage law, although every aspect of it has not found a place in the Statute Book of England. Therefore, instead of merely copying the English precedent let us see if it is possible to make any changes.

So far as the general principle of it is concerned, I do not think that the Bill is drastic at all in regard to divorce or other matter.

Whatever difficulties and complexities have arisen are due to a genuine attempt to harmonise the two opposing views—on the one hand the ancient idea that marriage cannot be easily severed and on the other the modern ideas which demand separation under certain circumstances. The problem now is how to bring about a synthesis between the two opposing views. Let us approach the consideration of this problem with a certain amount of coolness and with an attempt to understand one another. We cannot stop the current, whatever might be our views. I belong to a very conservative and very orthodox family. I am one of those who believe still in *Shradhas*. I attach considerable importance to my family home and I believe, to some extent, in the ancient view of life. But I cannot at the same time ignore the present day tendency. My sons may not be just like myself and my grandsons much less like myself. Under those circumstances, though my life is rooted in the past, to a very great extent I am in a position to appreciate modern tendency. Therefore, taking all these factors into consideration let us approach the consideration of this measure. If really you believe in sacramental marriage, this method of converting sacramental marriage easily into a civil marriage, somehow does not appeal to me. That is my view. Either have sacramental marriage or do not have it at all. Have particular grounds of divorce for sacramental marriage and particular grounds of divorce for civil marriage. Somehow I cannot reconcile myself to the idea of mixing up the two.

Now, I shall take up the chapter on adoption. The chapter on adoption does not call for any detailed consideration. While the main principle in regard to the law of adoption laid down by the judicial decisions bearing upon the subject have been kept in view, necessary changes have been effected as a consequence of changes in the law as to marriage between persons belonging to different castes. There is no point in conceding the rights of inheritance to the offspring of such marriages and retaining ancient rules as to the eligibility of a boy for adoption based upon the law of marriage as a condition precedent for the validity of adoption in particular castes and particular circumstances. The simple rule as to giving and receiving has accordingly been adopted for a valid adoption in the Bill. The property rights have been regulated with a view to avoid litigation between adoptive mother and the boy to be adopted. A provision has been inserted for preventing the divesting of estates which will have the effect of putting an end to interminable litigation which has been the special feature of law relating to adoption beginning from Bhuban Moyee's case. The law has also been simplified in regard to the need for any authority to adopt as a condition for the validity of adoption following the main principles of Mayukha Law. On the whole, it may be claimed that there is everything in the chapter on adoption to commend it for the favourable consideration of this House. The need for an express authority from the husband for the validity of adoption, the restriction of the scope and the terms of the authority conferred by the husband, the free consent of the nearest *sapindas* who are most interested in disputing the adoption and being a substitute for the authority of the husband and the relative claims of the senior and junior widow, the limits that ought to be placed upon the exercise of the power to adopt have been fruitful source of litigation in British Indian Courts. The Bill, I have no doubt, has considerably simplified the law as to adoption and the rights of the adopted son. On the whole, I should think there can be marriage between different communities—it has become part of the chapter on adoption, because when once you agree to the principle that there can be marriage between different communities—it has become part of the law—all these restrictions which have been obtaining in regard to the eligibility of the boy to be adopted must necessarily go. When *gotra* has disappeared, how can *sagotra* be a qualification for adoption? Therefore, in the interests of simplicity and of logic, we have necessarily to see that giving and taking are enough; we have to reconcile ourselves to this situation. Having taken the first step, you cannot stop at the second step. The Legislature here has already taken the first step. Therefore, there is no use fighting shy of the next step. Under those circumstances, I would commend for the favourable consideration of the House the Chapter on Adoption.

I am just coming to the other parts of the Bill where I differ from the Members of the Select Committee. In dealing with the institution of joint family, the problems of Indian agriculture and its future and the position of many trading facilities belonging to communities which have trade or business as their principal avocation must necessarily form an important factor. Anyone who is in touch with conditions of village life in India knows that particular families have long been in possession of particular lands from generation to generation, that being the main reason assigned for conceding occupancy rights to tenancy families who have been cultivating the land for a long time. Here I must say that I radically differ from my respected friend, Mr. Santhanam, in regard to what he said about village life in India. It is not correct to say that the joint family is breaking up. I also claim to be in touch with village life in India. I am a villager myself, though I have spent about forty years in the City of Madras. Hardly has there been any year in these forty years in which I did not spend at least a month in a village. I spend a good part of Christmas and the summer vacation in the villages and with the people of the villages. Therefore, I claim to know something of village life in India, at least village life in Madras, though I know very little of village life in other parts of India excepting through the medium of books and village manuals. Therefore, I wholly disagree with the statement that so far at any rate the villages of India are concerned, the joint family life is breaking up. At the same time, I certainly agree with my friend, Mr. Santhanam, in this, viz., that so far as what may be called collateral branches are concerned, after the first generation, there is a tendency for the joint family to break up. In the first generation there is no breaking up, certainly not during the life-time of the father. If there is any breaking up, it generally is after the children of the father pass away and children's children come into their own. Therefore, you must take the existing state of things into consideration instead of proceeding merely on theory. I myself have been a member of a joint family till recently and I still believe in the ideals of a joint family life. I certainly think that in certain aspects of life in regard to education for example, the joint family system has done a good turn. Many a poor brother has starved himself in order to educate his brothers ; many an uncle has starved himself in order to educate his nephews. A sort of qualified Socialism has existed in the joint family life. At the same time, I agree that no institution can last for a long time. No institution must be allowed to come in the way of social progress. But the question is, has the time come for this question to be taken into consideration ? I do not subscribe to the view that the joint family system is breaking down so far as the villages are concerned and in any scheme of reform we must remember that India is a land of villages. The rural people are still following

the joint family system to a large extent. The recent inroads made into the joint family system by conceding rights to the widows and daughters-in-law have not materially effected the position. Even in regard to non-agricultural property, communities which have trade as their principal avocation are still carrying on trade or business as a family adventure or business. It is so in my part of the country. I have had a good deal to do with the Natukottai Chettiars for the last forty years, and it is only within the last five or ten years that they are starting companies not with the idea of breaking up joint families but to see that they get out of income-tax regulations. Therefore, it is not correct to say that joint family life is breaking up either among the *Vaishyas* or among the Natukottai Chettiars or among the *Marwaris*. Now, sitting in this Legislative Assembly or Parliament, there is no use our thinking that we are in possession of all the facts regarding every nook and corner of India and legislating on that basis. The only thing we have to consider is, is it so out of tune with modern conditions and is it going to stand in the way of further progress ? You have also to note certain changes which have already been made in the joint family law. The rigours of joint family law have been considerably relaxed in recent years. It is now settled law that any member of a joint family may by a unilateral declaration sever himself from the rest of the family without reference to any court of law. The manifestation of will or intention on the part of any member of the joint family is enough for severance, even so many still continue as members of a joint family because still they like the institution of the joint family. Any member of a joint family may alienate his share of the family property. In the case of father and son, the entire property is liable for the debts of the father. The son is responsible for the debt of the father. He cannot escape his responsibility by saying that the debts were incurred by the father for immoral purposes. I am certain that that sort of litigation is fast dying down. There is no question of escape now by saying that the debt was incurred by the father for immoral purposes. Then again, the law as to self-acquisition has been considerably simplified. Decisions of the Privy Council have made it quite clear that if a person acquires property, he can keep it for himself. Therefore, the plea that I would make to my friend, the Hon. Law Minister is that this institution still obtains. It may break up in the course of the next fifteen, thirty or fifty years. With the change in the law of marriage and other things, it may break up. But my whole point is, without reference to the will of the people, without reference to their consent, without taking into account the general consciousness of the people, why undertake this legislation ? You may think that I am a kind of ancient fellow who does not understand these things. I do want that this country should move with the times, but my plea is you should first ascertain

the will of the people. It may be argued. " All right, so far as agricultural property is concerned, we will not touch it, but we will make a change in regard to non-agricultural property ". It is not easy to make a distinction in matters of this kind between one kind of property and another land or property. Once you change the law in regard to non-agricultural property, a change in the law in regard to agricultural property must necessarily follow. Though in the matter of distribution of legislative power between the Union and the States for taxation purposes, a distinction is maintained between agricultural and non-agricultural property, it is an accident only that certain power is given to the provinces and certain power is given to the Centre, and it cannot be denied that Hindu law of succession is single and entire. Succession is not a truncated affairs. Succession cannot be split up. Therefore, when you consider the question, you should consider it in all these aspects both in regard to agricultural property and in regard to non-agricultural property and you should address yourself to the question whether in the larger interests of society, the time has come for a revolutionary change in the family system. I request my hon. Friend, the Law Minister to consider the question why certain chapters of the Bill should not be postponed.

Sir, I just want to deal with another aspect of the question namely the rights of succession of sons and daughters in regard to succession proper. I have got a special claim to speak on that behalf as I am a father of both daughters and sons and I repeat that. In fact the majority is on the woman side, four daughters and three boys. Therefore, I have a special claim to speak on this subject (*Hear, hear*). Apart from what little I know as a lawyer, I have a special claim to speak as a father of daughters and of sons. Now, I want you to look at the general set up of the Hindu family in dealing with this problem. If three sons find it difficult, you say, to live together and to own property in common how can you expect the daughters married to different people, may be people belonging to different castes or communities to carry on joint cultivation in villages ? Under those circumstances, is it in the larger interests of the country, that this property of the father as well as of the son be divided up equally between sons and daughters without any question of difference ? If it is a question of justice, if it is a question of equality, if it is a question of theoretical equality, I have nothing to say against it, but law is not logical— it does not mean that it is always illogical—but it has to take into account the social strata of society, the consciousness of the community, its effect upon the family life and other factors. Therefore, you have not a clean slate to write on. Therefore, let us take what happens in a Hindu family, Mr. Santhanam looks with equanimity from Delhi. If any marriage takes place in a brother's house, the sister and the daughter occupy the most important part.

It is regarded as a father's house, the son looks upon the family house as his house. Every one of us know what an important place the sister and the daughter occupies in the household. (*Hear, hear*). If the mother and father sit together for the *Aarathi*, it is the daughter, it is the sister that brings it and you give the present to the daughters and the sisters on that occasion. After all we are all Hindus; you cannot forget that. The very first person who receives the present will be the sister or the daughter in the household. The second thing is that no marriage can go through in any Hindu household unless provision is made for presents being made to the daughters and to the sisters. Again even though, women who may not care to bear children may not appreciate it—daughters of the family are certainly cared for on every occasion such as *srimanta* or on occasions of first confinement and second confinement. A girl generally goes to the father's house or to the brother's house and it is only after getting two or three children that the girl does not go to the father's or brother's house, and this is Hindu life today. It is not the life in Delhi, it is not the life in Calcutta, it is not the life in Madras that is to be the guiding factor in these matters. It is the normal ordinary life in every village, in the whole of India, (*Hear, hear*). Therefore, I would ask you most respectfully the Members of this House, though I am addressing Mr. Deputy Speaker, to take these factors into consideration. The Bible said " I shall set father against father, son against son and brother against brother" or some such thing, but let not legislation result in a feud between the members of the family, an unnecessary feud between the members of the family. A certain amount of bickering, a certain feud is inevitable, so long as property is there.

Sankara said that property is the soul of strife in our country and that is inevitable, but let us not give an impetus to it by stating that I shall set brother against brother, a sister against the brother, the brother against the sister and in that way mould the family life of the India at present. The time may come when each daughter may arrange for her marriage after they attain their maturity. Many of the girls look to their brothers for their marriage. Hardly a week passes when a brother or a father does not come and ask for a little help in regard to a marriage. It may be that I am old-fashioned to consider such requests, but that is Hindu life. I am supposed to be educated in English ways of life but what would you think of other people who are not so educated as myself? You may be more advanced, I may be less advanced, but I still claim that I am born of the Indian soil and my ideas are rooted in the Indian soil, and therefore, I plead for the retention of these great virtues which have characterised our Indian life (*Hear, hear*). I do not want to go against the modern trends of thought or the modern ideas of progress, but at the same time while it is our duty to keep in touch with the currents of national life, with

the social currents at present working, there is no use our imagining that we represent the whole of India. I may tell you, even among educated women, all of them do not think alike and even women who are in the legislatures do not think alike with some other educated ladies who are members of respectable households; they differ in some respects.

Shrimati Renuka Ray (West Bengal : General) : Are our households not respectable ?

Shri Alladi Krishnaswami Ayyar: They are very respectable. I am glad that you have interrupted. I am accustomed and I may tell you they are quite as respectable, though they might be a little conservative,—as some of those people who are very respectable and who have advanced ideas in these matters. I have given my views and I certainly refuse to believe I am not a respectable man; I am at least as respectable as others, but my ways of life, my way of thinking, my attitude to these questions is different from those equally respectable because I am cast in a different mould. For example, I have the greatest respect for our Prime Minister and on certain questions I yield to him, but at the same time, I do not look at questions with the same glasses as my hon. friend, my esteemed friend, if I may call the Prime Minister my very esteemed friend. It is merely a mode of approach.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways): What is your actual proposal ?

Pandit Lakshmi Kanta Maitra: He is giving his proposals in an excellent way.

Shri Alladi Krishnaswami Ayyar : I do not fight shy of that. The question I have been put is in regard to un-married daughters whether any kind of special provision may be made either for marriage or a special portion may be set apart so far as the marriage of girls is concerned. The law may provide that the daughters will take the heritage of the mothers and the sons will take the heritage of the fathers.

So far as daughters are concerned, I am quite willing to and quite anxious that as liberal and as obligatory, a provision be made for the girls who are un-married. I have absolutely no difficulty in that matter. That is my proposal. It may be worth anything, it may not be worth anything, but that is my proposal.

An Honourable Member: What about the money from the mother ?

Shri Alladi Krishnaswami Ayyar : There is no use speaking about that. You take a census of the people who pay income-tax in this country? They are not many. This is a poverty stricken country. So there is no use of saying that that the mother has no property. Many are poor. They may have no property, but they cannot get away from social obligations. Those who have property may divide their property, but that may have repercussions upon the

people who have no property, or very little property, but at the same time who are quite sensitive to the social and family obligations. Therefore, in any step that you take, you have to see that the social obligations are not retarded. That is the plea I make so far as this is concerned. In regard to the institution of joint family property, I differ from my friend the hon. Dr. Ambedkar. It is seldom I differ from him. And I am often influenced by him, and have occasionally influenced him. Therefore, I have no doubt that he will pay heed to some of the criticisms which those of my persuasion have offered. He may look obstinate, but there is none who yields to reason more than my friend Dr. Ambedkar. I know him very well and it has been a great asset to me, I mean my close acquaintance with him these three years.' Well, that is my view, so far the institution of joint family and the rights of equal succession of sons and daughters is concerned.

The next aspect is with regard to *Stridhana* property, and on that, in so far as you remove all restrictions on the power of alienation, I am at one with the House, that is with the other Members of the House. This has merely led to unnecessary litigation, the reversionary filing suits for the declaration that alienations by the widow are invalid, going to this court and that court, and all sorts of evidence being let in. If only in the interest of unnecessary litigation being avoided, I am for the widow being given absolute powers of disposition during her life-time. But from that it does not necessarily follow that the course of devolution must be the same with regard to every kind of *Stridhanam* property. You call it *Stridhanam* and then begin to attach certain consequences in the matter of succession. Once you make it absolute property, why not it descend to the heirs? That is the question. I am willing to put the question to ninety nine Hindus I meet, " Here is a property devolving upon the widow from her husband. It is absolute property, and after her death it is to go to her father and mother, in preference to the father and mother of the man whose property has devolved upon the widow." I put that question. You may take a referendum in any part of the country and I am quite clear what the result of that referendum will be. And I challenge any Member to say in this House that the referendum will be other than what I feel. Therefore, as a lawyer, if you put me the question, can you have two kinds of absolute properties, one kind descending in one way and another kind descending in another way, and ask me, why not in the interest of uniformity, give the same rule of succession for one kind of property and the other kind of property? Then I say that you need not sacrifice social sentiments at the alter of logicity. Law need not always be logical. Law need not necessarily be Logical. Logic is not the essence of law.

The Honourable Shri K. Santhanam : Should law be generally illogical?

Shri Alladi Krishnaswami Ayyar: My answer to my friend Mr. Santhanam is that law need not necessarily be logical. That is so because law is the product of social evolution and social adjustment, and therefore, how can it always be logical? Society does not move according to a particular standard or plan. Unfortunately, society, except in a communistic society, does not move in that way. Therefore, under these circumstances, you take the average sentiment of the Hindu into consideration. There is no use of saying that it is illogical to draw a distinction between one kind of *stridhana* and another. Why should the *Stridhana* be allowed again to go to the husband's kindred? Why not it go to her heirs? In the very Bill that is the provision that is made. Therefore, so far as woman's property is concerned, I think that is a point which may receive the consideration of the hon. Law Minister, before the Bill becomes law, consistent with the sentiments and the general feeling among the people. Until recently the widow did not have the power of disposition. The question is whether on the theory that each person when he inherits property, he or she must become the stock of descent, inherited property of every description must be treated alike. That is my plea with regard to woman's property. Throughout I have refrained from resting on logic.

And lastly. Sir, I may mention, if I may, a few words with regard to distant heirs. I feel that the present provisions are a great improvement upon the previous Bill. It has drawn upon certain principles of *Dayabhaga* and it has also brought in the other systems. And I think, so far as distant heirs are concerned, the Bill as it stands is a great improvement upon the original Bill, and if there is any defect here and there, they can be removed easily.

The chapter on guardianship, maintenance, and the other chapters are conceived in a very liberal and progressive spirit, and I think they deserve the whole-hearted support of the Assembly, though it may be that here and there, they may require some modification, but that can be easily done at a later stage of these proceedings. Therefore, in the full confidence that the hon. Law Minister as well as the Prime Minister will be responsive to public criticism, while taking into account the progressive tendencies of the age, I move for the second reading of the Bill and I support the motion moved by the hon. Dr. Ambedkar.

Dr. P. K. Sen (Bihar : General) : Sir, I am quite conscious that I must be brief, as there is a great pressure upon the time of the House. At the same time there are certain aspects which have been raised, even by my predecessor, my esteemed friend, Shri Alladi Krishnaswami Ayyar, which do call for some comment. He has followed the order of the Bill, as a matter of fact, and taken the law of marriage first of all. I must confess that I could not

exactly follow him as to whether he gave his opinion in favour or against it. As a matter of fact he said in one part of his speech, while dealing with that section, that he had no definite opinion on the subject. So far as the law of marriage and divorce is concerned I do feel that one must be definite. There is no part of law which calls for definiteness more than the law of marriage, because, it affects not only the parties who solemnise the marriage between themselves.

Shri Alladi Krishnaswami Ayyar : Sir, I do not know if I had made myself clear. What I said was that if we had had a clean slate to write on, we might do otherwise but having regard to the previous step taken by this House and the legislation undertaken, there cannot be any serious objection to the portion relating to marriage excepting in regard to one or two matters, which I mentioned in the course of my address.

Dr. P. K. Sen: Except in relation to sacramental marriage. I suppose.

As I was observing we have to see that in every respect the law of marriage should be perfectly definite and explicit and there should be no ambiguity at all about it and it is for that reason I take it that the Bill contemplates that even when the marriage has taken place according to the sacramental form there may be objections raised with regard to it. It may be urged that there had been some irregularity, some omission, some particular form of ceremony not having been observed. Take, for instance, *saptapadi*. Everybody knows that *Saptapadi* is an essential factor. Not until the seven steps have been taken can the marriage be said to be valid. In fact, all manner of irregularities may be urged as objections with regard to the marriage. It is for that reason that it has been provided in the Bill that even when a marriage has been solemnised according to certain sacramental form, it is open to a party (it is only permissive) to go and have the marriage registered, so that there may be no objection raised later on with regard to its validity. This is, I submit, absolutely essential, because it is not only the two parties who solemnised the marriage between themselves who are affected but it is the next generation and the next generation, indeed, generations unborn, that are affected by it. The whole question of legitimacy depends upon it. Therefore, I submit that whatever may be the irregularity, there must be some method by means of which the legitimacy of children and their rights of inheritance may be protected and may not be left in uncertainty. There can be no difficulty whatsoever: there is some way of ascertaining what the necessary forms are which have to be observed in order to make a sacramental marriage valid. That too has been provided for in the Bill in the form, viz., that in any particular area it may be found that a particular set of ceremonies is regarded as essential to the validity of the marriage: in that

event those ceremonies will be regarded as validating the marriage. Nevertheless, it may so come to pass that some of these ceremonies have been performed or it may be that the performance of those ceremonies were not exactly in the manner prescribed. In that event what is to happen? Is the married couple then to remain in the position which would make their children illegitimate in the eye of law? It is for this reason only that it has been made optional for the parties to have their marriage registered in order to get it validated.

I come to the next question about public opinion and about their being a large body of the public not having been sufficiently apprised of the contents of the Bill. The question has been raised often and often here, why hurry why not wait for a year or two or three years? We have already waited long enough. Why should we not wait for another period? It is not a question of eleven years which the Hindu code has taken, nor is it a question of two years which have elapsed since. This has been mooted from the last century.

The House will be pleased to recall Act III of 1872. The Special Marriage Act which was first placed before the legislature was in 1868 by Sir Henry Maine at the instance and on the initiative of Keshub Chunder Sen, Bengal's great social reformer. As a matter of fact, to go further back, in the fifties of the last century, the Widow Re-marriage Bill was on the legislative anvil. The great Ishwar Chunder Vidyasagar was exerting a great influence on the public mind to get their support for Hindu widow remarriage. It was at that time that a remarkable petition signed by four hundred men was put up before the legislature, in which they said that although they were orthodox Hindus, they did not believe in restricting themselves to a particular caste, they believed in inter-caste marriage, they believed in monogamy, they believed in certain ceremonies being essential for the purpose of observing pure Hinduism but that they wanted to eschew other ceremonies and that, therefore, they wanted the help of the legislature to pass a comprehensive Bill, not only the Hindu Widow Remarriage Bill but a Hindu Marriage Bill, in which provision would be made for inter-caste marriage, for adult marriage and for marriage solemnised with certain ceremonies only to which they did not take exception, and not every ceremony which at that time was considered to be obligatory. This was somewhere about 1856 and it was a most representative body that put forward this petition. Among those notable public men who signed the petition were people like Peary Chand Mitter, Radha Nath Sikdar, Abhoy Charan Mullik, and Rasik Krishna Mullik. They had nothing whatever to do with the Brahma Samaj : they were orthodox Hindus. Side by side with this organisation there were all the activities of the Brahma Samaj going on. The Brahmans had already solemnised inter-caste marriages, because they

believed that " Right was right: to follow right were wisdom in scorn of consequence." They did not care what the law was. They said that they would break down caste notwithstanding the fact that there might be difficulties regarding legal validity. Later on they thought that this state of affairs should be removed for the sake of posterity, for the sake of the children and it was therefore, that Sir Henry Maine introduced a Bill which ultimately emerged as the Special Marriage Act of 1872. That this Act has catered not only for the Brahma community but for a much larger body is testified to by the fact that after the passing of the Act several amendments have been sought in order to make it applicable to other sections and in order also to obviate certain objections to particular sections of the Act. In doing so, these people at different times acted as the representatives of the conscience of the society—the minority conscience, let us say. But the minority has a conscience; and the social conscience of the minority also must be respected. In every country we find that it is the minority conscience which has always come to the help of law for the purpose of vindicating its own view. Well, Sir, today we do not know which section is in the minority and which section in the majority. But it goes without saying that in a democratic form of government all sections of people must necessarily have their consciences vindicated, and their ways of life and thought, at least so far as fundamental points are concerned, respected. In that view the question that really has to be solved by us is this : Is this Bill in any particular respect imposing itself upon the conscience of any particular section? (*Babu Ramnarayan Singh* : Yes) And by that will its excellence or otherwise be tested.

Now, if we come to the first part of the Bill, so far as the question relating to marriage, divorce, judicial separation, guardianship, alimony, custody of children and so on, is concerned, so far as I can understand, it cannot possibly be contended that it is being thrust upon anyone. After all, it is only in those cases where you find that divorce has become absolutely unavoidable that the provision will be utilised. And there are such cases, there can be no question whatsoever about that. There are cases where continuance of the marriage bond will really lead to misery from the point of view of both parties, will lead to disintegration of the family. It is only there that divorce can possibly come on.

Sjt. **Rohmi Kumar Chaudhuri** (Assam: General) : May I ask if the subsequent marriages become happy? They become worse.

Shri L. Krishnaswami Bharathi (Madras : General) ; It depends upon the lady you marry!

Dr. P. K. Sen : I am not going into that question because in that case it would be a matter of statistics as to how many cases have really become

happy or how many cases have really become happy or how many cases have turned out unhappy. That is not the test. The test is unavoidability. Is there anyone who can possibly say that in no circumstances should there be a separation at all? There may be circumstances imaginable where there should not be separation. It is for us to sit down with good will and mutual understanding, and discuss all these points, and find out whether it is going to be compulsory upon any particular party or not. There is no compulsion at all here. It is perfectly optional. If you find that it has become impossible to carry on you can go to a court of law. The court of law will go into the matter, find out whether all the requisites of a divorce or a dissolution of marriage are present and then issue a *decree nisi*, or whatever it may be. But that does not necessarily mean that divorce will go on multiplying from day to day. That depends entirely on the temperament of the people. And I feel bound to say that because it has taken a particular course in America or England or in other foreign countries, in India also it should take the same course—that is an impossible conclusion.

(Pandit Lakshmi Kanta Maitra: It is the same institution). I do not believe at all that in India the same result will follow.

Pandit Lakshmi Kanta Maitra: Worse.

An Honourable Member: Is it not time to rise for Lunch?

Mr. Deputy Speaker: I think the hon. Member is likely to conclude soon.

Dr. P. K. Sen : I am trying my best to conclude soon, but I have just begun.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

Dr. P. K. Sen: Sir, when this House rose for mid-day recess, I was on the point of the permissive nature of the provisions regarding divorce and allied matters. The question that was put to me in the course of the debate was why there had been so many divorces in other countries.

Shri Mahavir Tyagi (U. P. : General) : On a point of order. I find only the hon. Minister of State for Transport and Railways sitting on the Government Benches. The Bill under discussion neither deals with Railways nor with Transport. Will you be kind enough to call the Hon. Law Minister, Sir ?

Mr. Deputy Speaker: I am sure the Law Minister will be here soon. Till then, the other Minister who is here will take notes.

Shri Ajit Prasad Jain (U. P. : General) : This is almost a contempt of the House.

Mr. Deputy Speaker : I have got chits sent to me by no less than 36

members so far.

Shri M. Tirumala Rao (Madras : General) : Some have not sent our names. Our chits are lying here.

Shri Mahavir Tyagi : And many have been waiting to catch your eye. They have not sent chits.

Mr. Deputy Speaker: So the position is that, besides these 36 there are others also trying to catch my eye. As the position stands at present. Government had fixed only yesterday and today for this Bill. I do not know the state of government work. I do not want to stifle discussion, but at this rate I do not think we can go on. Therefore, I suggest to hon. Members to limit their speeches, as far as possible, to fifteen minutes.

An Honourable Member: Impossible. You suggest to Government to extend the time.

Shri R. K. Sidhva (C. P. and Berar: General): Such members as are hopeful of finishing their speeches within five or ten minutes should be given preference. There are many such members, I know.

Shri L. Krishnaswami Bharathi: But will they keep to their assurance? That is the point.

Shri R. K. Sidhva: I give a definite assurance.

Shri Biswanath Das (Orissa : General) : May I just bring to your notice, Mr. Deputy Speaker, that the hon. Speaker had given an assurance to this House that he would give full scope for discussion of this motion and it will be unfortunate if you allow only ten or fifteen minutes for a speaker. It is something absolutely different from an ordinary Bill. It concerns the life and the economic and social existence of crores of people. Under these circumstances, I would beg of you to stick to the assurance given by the hon. Speaker.

Shri L. Krishnaswami Bharathi : He is the Speaker. He can now decide.

Mr. Deputy Speaker: It is unfortunate that the Speaker is not here in his seat. I do not want to stifle the discussion, but I am only suggesting a time-limit so that all Members who want to take part in the discussion may have an opportunity. I leave it to the good sense of the hon. Members themselves. Fifteen minutes is not an inviolable limit. One minute above or one minute below may not be very bad. But beyond that I am afraid even if the government were willing— I do not know whether they are willing or not—to extend the discussion by a day, it would be impossible, having regard to the number of speakers who want to speak, that everyone will have a chance.

Pandit Balkrishna Sharma (U. P. : General): Then keep it to the next session.

Mr. Deputy Speaker: It is not in my hands.

Shri S. Nagappa (Madras : General) : Why not sit for one or two hours longer?

Mr. **Deputy Speaker**: At present the Members who can finish their speeches within fifteen minutes can do so, but in cases where individual Members consider that they must have more time, they can have more time.

Shri M. Tirumala Rao : You can consider the merits of a speech, and if many arguments are repeated, you can ask the speaker not to repeat the arguments.

Mr. **Deputy Speaker**: Very well, then. Dr. Sen.

Shri H. J. Khandekar (C. P. and Berar : General) : There are only 2 & half hours more. Only ten speakers will be able to speak even if each speaks for fifteen minutes. What about the others who want to speak on the bill? I request you to request government to extend the debate by a day or two. This is such an important measure that the eyes of the whole nation are focussed upon it. We must have full discussion over it and then only pass it, in whatever form it is agreed to.

Mr. Deputy Speaker: I am sure the proceeding of this House and the suggestions made by hon. Members will be communicated to and taken notice of by Government. Dr. Sen may continue his speech.

Dr. P. K. Sen : Sir, I quite realise that brevity is the soul of wit, but there are occasions when brevity is the soul of unwisdom, because I shall not be able to make things clear at all and therefore, it will not benefit anybody at all if the House were to hear a discourse which is inconclusive and obscure. I shall therefore, try to touch only on the fundamental points and not enter into details at all.

The question that I was last addressing this House on was, whether or not by giving permission for divorce this country will not be plunging itself into a large number of divorce cases like other countries. My answer to that question was—and is—that the cases for divorce will depend entirely upon the quality of the moral values that a country has. A society may be so constructed that only in absolutely unavoidable and necessary cases would the parties seek a divorce and that there would be inherently a dislike, a distaste, a contempt for divorce where there is no occasion for it and where evidence is really fabricated for the purpose of establishing that there are reasons for divorce. In this country the experiment has been tried in Baroda and in some parts of South India, where there is and there has been divorce for a long time past, but I am told there have been only three cases so far in Baroda and these three cases during twenty years. I submit, again, that it is the social atmosphere and the moral values prevalent in the particular society that determine the number of divorce cases. Therefore, it is not the law that

makes the society. The law only gives sanction to certain cases where it is necessary to give sanction for divorce. In this part of the Bill which deals with marriage law there are four characteristics. The first is : inter-marriage has been allowed. The second is that there is prescription for divorce. There is, thirdly, prescription for monogamy. Now all these are present in Act III of 1872 and, therefore, it is not the Hindu code which has raised these points for the first time. It was in the fifties of the last century, as I have said, that the agitation arose and ever since then the agitation has been going on. The crusade against caste was no doubt first led by the Brahmo Samaj under Keshub Chunder Sen. The Brahmos at that time suffered persecution, ex-communication and ignominy of every description. Today we recognise that caste shall go and therefore, all these provisions that are laid down here in this Bill relating to intercaste marriage need not raise any opposition at all. There is no doubt whatsoever that there is a very large body—if not an overwhelming body—of public opinion in favour of abolition of caste. Otherwise, what are all these provisions that we have laid down in the Constitution? Caste shall go. If we take that position then there is nothing objectionable so far as those provisions are concerned which relate to intercaste marriage.

The same consideration applies to monogamy. I do not know whether there is any public opinion now in favour of bigamy or polygamy. There may be individual cases; but that is quite different. The whole body of public opinion now, I submit confidently, is in favour of monogamy. Therefore, there is nothing objectionable, so far as that is concerned in the present Bill and, as I have said, permission for divorce cannot possibly raise any difficulty because, after all a permissive provision must necessarily be there for those unfortunate cases where divorce is called for.

Proceeding, Sir, to the next point as to why there should be any change at all (that was the point on which I was) it has been said that there must be a strict adherence to *Shastric* law and that there should be no departure whatsoever from it. For hours this discussion has been carried on on the floor of this House. It has been contended that *shastric* law is absolutely final, inviolate and inviolable. You cannot change it. I should like to know what *Shastric* law means. As a matter of fact, in our *shastras* there is always provision for change and there has always been change. Otherwise what is the meaning of these numerous *Smritis*. We have in Manu the well known injunction that there are four sources, four norms, of conduct laid down:

Which being translated means *Shruti*, *Smriti*, the usages established by righteous men and the satisfaction of one's own inner self—these furnish the four standards or norms of conduct. These four norms of conduct include

within them the inner satisfaction of the soul, the conscience by which, I take it is meant not individual conscience only, but social conscience also. The social conscience of the age in which we live has got to be respected and that is one of the standards by which our conduct, our *Dharma* is to be ascertained. That is one of the standards by which law must be laid down and it is on this principle that all along, the law, the so-called *Shastric* law, has changed and changed and changed. My hon. friend, the Minister of Law said in his opening speech that if you go to *Parasara Smriti* or *Narada Smriti* you find there provision for widow re-marriage, and provision for very many other things which may be called revolutionary. How did they ever come to it? How did they get beyond the barriers, as it was, and break through them and start upon something which was revolutionary? It was because according to the highest injunctions laid down, there are not only *Shruti* and *Smriti* but other sources also. You have to take the conduct of the righteous and the pious,—those who know the way of life that leads unto self-realization—and it is those people who laid down the norms of conduct. You have to follow those. They are not *Shastric*. They are not necessarily to be ascribed to any particular *Shruti* or *Smriti*, but those are the ways of right living that have been laid down definitely for the purpose of regulating our conduct—individual as well as social. If that be so, if that is the way in which the law must evolve itself, then necessarily where we find that there is a strong public opinion, where the conscience of society or a particular section of society, the minority section, let us say, dictates that a particular way of life should be sanctioned by law, law comes forward to the rescue and lays down that it shall be so. If that be our standard, then can we possibly at this moment say that there shall be no change at all? Can we possibly assert that our law, our *Shastric* law, has been stationary? If it is inviolable and inviolate, if it is unalterable and inexorable, then there will be no progress and it will be a poor compliment to pay to our Indian law-givers to say that law has been stationary. On the contrary, it is time today to muster up courage and to say that the views of no particular section, whether minority or majority should be trampled upon, that if there are strong opinion held in regard to a particular point then the law must come forward to give permission for that.

I pass next. Sir, to the other fundamental points. What is the other main objection raised with regard to this Bill. It is on the question of property—the *Mitakashara* and the *Dayabhaga*. Is it possible at this moment, let us ask ourselves seriously, to raise this question? The joint family system had its virtues; it had its glories in the past. Nobody can deny that. But I have been under the impression that of late it is the tyranny of the joint family system which has appeared most obnoxious to a very large number of people. They

feel that the earning people in the family are sucked dry by the indolent ones. There are people who do not want to go forth and earn at all because there is a family behind them, and they think, "What is the use of our taking any trouble for earning when there is the family to support us?" And those members of the family who by the sweat of their brow earn something, it is their income that is sucked dry by others who are indolent and who are also in every way extravagant.

Dr. P. S. Deshmukh (C. P. and Berar : General) : Have they ever complained, Sir?

Shri L. Krishnaswami Bharathi: Yes, they do. Complaints are inherent in the situation.

Dr. P. K. Sen : If their complaint could be heard, then of course it will be a different matter, but if they were people in the family, then there would be no opportunity whatsoever, to make a complaint. The only way in which they can possibly complain is now laid down namely, by expression of intention to separate. Now, what is the actual position ? Howsoever strong the family integrity may be, any individual member can come forward and say, I intend to separate, and that expression of intention will instantaneously effect separation in the eye of the law. Where is the integrity of the family then ? What then has the *mitakshara* family to do ? According to judicial decisions now, it has come down to this that the slightest intention to effect separation and the expression of that intention will effect that separation. In that case I do submit that it is too late in the day to say that the joint family is a huge institution which remains intact. It is tumbling down and there can be no doubt whatsoever that with the effort of man it cannot possibly be protected any longer. People want individual liberty now. Everybody who earns wants to earn and also go his own way. He does not want to be fettered by other members of the family. It is individual freedom which is now their aim and object. This cry has been raised from the earliest times. "The individual withers and the State is more and more." That is a complaint which has been heard for some time past. Today also we feel that in our society the rule of the majority, the rule of society, is predominant, but nobody wants this predominance any longer. The individual now wants to go off at a tangent. He says, I do not want to be governed by the family. I want to earn my freedom and I want to go my own way. I appeal to every individual Member of this House to ask himself if that is not the spirit of the modern times, and if that is the spirit, then where are we ? Where is the advantage in trying to bolster up an edifice that could not possibly exist any more. Therefore, this great difference which is being drawn between *Mitakshara* and *Dayabhaga* is practically gone. It may be that when we sit round a table in perfect amity and

goodwill, in perfect understanding of each other, we may be able to iron out all these differences and we may be able to arrive at a very satisfactory solution without hurting the instincts of any particular section, and I do hope that that will be so. I do not want to go into details, but I just want to point out that this is the line upon which our discussions may proceed in future.

Then, Sir, take the other details. Practically in the matter of inheritance or in the matter of succession, there is nothing upon which controversy rages except on the daughter's share. All the other things are more or less now things of the past. Legislation has taken place, numerous judicial decisions have been passed whereby rights have been given to all other members of the family, those that claimed them. The only thing upon which controversy centres now is about the daughter's share. It may be half the share that the son gets, it may be an equal share with the son, it may be any other share that may be decided upon by everybody sitting round a table. I am perfectly confident that with goodwill and mutual understanding, something satisfactory may be evolved in this line. It is not that every individual member of the Select Committee is bound down by its decisions. We are all free to exercise our own views. I frankly admit that there are certain things which I do not like. There may be other members who say that there are certain aspects of the Bill which do not commend themselves to them. Therefore, all these differences have to a certain extent to be ironed out by mutual discussion, but apart from that, the fundamental question is whether the daughter has to get any share at all. Now when it is said that the daughter cannot get a share at all, then I do think—and I have no hesitation whatsoever in expressing my views freely and frankly,—I do think that it is the same old prejudice against the female members of the family that dictates this objection.

Shri L. Krishnaswami Bharathi: Quite right. That is the real point.

Dr. P. K. Sen : We may hold our women members in high esteem. No doubt it is often said that the ladies of every family are angels of grace, that they are ministering angels. That is perfectly true, but do we do all that is needed, all that is called for, towards them? Do we do all that is wanted from the men-folk to the women folk in our families ? Let us be perfectly sincere and frank about these things. There is a great deal that has to be done for our women-folk. Women today want their place in society. Continuing to do their duty by the family and continuing to be ministering angels of the family, they have also some other work to do. They have to take an interest in public affairs. They have to take an interest in social organisations. Their presence is indispensably necessary in many organisations which are being set up today. Therefore, we cannot possibly have a framework of society in which such women could not possibly exist. They must always be the ministering

angles of the men-folk, that is to say, looking after their physical comforts and welfare, and do nothing so far as their higher aims and aspirations are concerned. But they have a function to fulfil in society. In the society of independent India, women have a very large place to fill in every organisation, in every movement. That being so, we must set them free and there is nothing that is wanted more than economic freedom. (*Hear, hear*). There are many cases in which lives are blasted because they have got to be dependent upon some male member of the family for their very existence. Therefore, the question of their economic freedom has a place in the affairs of today.

Let us not be absolutely oblivious of that fact. If we want to give economic freedom, then there is no reason whatsoever why we should turn away and say : " Oh a daughter, she cannot have a share, she will remain a ministering angel of the family " by which it is meant that she will always be a dependent there; and if she is a widow, she will be only looking after the comforts of other people and will not be able to do any other service to the family or to the society or to the nation at large. Well, Sir, I do not propose to go further, because it will take a very long time and I know that I shall then be trespassing upon the time of others. But a good deal has been said, a great deal of discussion has taken place upon the fundamentals. When I contemplate all these discussions that have taken place, I am firmly convinced that if after this debate, we can sit around a table and we can bring ourselves to consider all these details in a spirit of perfect goodwill and understanding, we shall be able to attain a solution. The minor points that trouble us are many, it may be, but their solution is not so difficult. It is the fundamentals upon which we have to concentrate our attention and when we do so, I think our path is clear.

Shrimati Kamala Chaudhari (U. P. General) : (*English translation of the Hindi speech*) Sir, before I say a few words in connection with the Hindu Code Bill, I should like to congratulate the hon. Dr. Ambedkar for bringing forth this Bill. My own feeling is that this Bill has been brought up before this House in conformity with the spirit of time. This is absolutely in accord with the march of the time and present-day demand. Although it is being opposed on religious, cultural and many other grounds and various kinds of things are heard against it in the course of hostile propaganda, yet my personal feeling is that this Bill will prove a sort of panacea for our women community and the progress of our Indian Society, and this will go a long way to benefit our women-folk who are even today being degraded to the lowest ebb. Moreover, our future women-folk shall also remain indebted to the hon. Minister and this House if this Bill is passed in this Assembly.

Those who oppose this Bill have expressed the opinion that this will prove harmful to our religion as well as culture. This thing does not appeal to me at all. This is another thing that the brain and heart of our countrymen have been framed in such a way that anything said in the name of religion highly appeals to the sentiments of the people. On the altar of this very religion—in what manner did we accentuate our communal feelings ? In the name of this very religion, we have seen the murder of Mahatma Gandhi—the father of the Nation.

So, in this way, I see that this Bill is also opposed by raising a hue and cry in the name of religion and Indian culture, and those of the persons and our sisters, who cannot even as yet understand what is law, how this Assembly has been constituted, who cannot even understand the right of franchise which has been granted to them in our Constitution, are being told like this, and it is acclaimed that a great majority of women in the country are opposed to this Bill. But so far as my humble intellect can conceive, this Bill 'does not appear to contain any such thing which might be against our religion and culture.

In one of the parts of this Bill, a provision has been made prohibiting the right of polygamy which is at present exercised by the religious minded Hindus. This is not permitted and a ban has thus been imposed upon it. With all the humility, I would submit that I apprehend that this Bill might be opposed by a majority of our brethren for the reason that some such ban is being imposed upon them that in the life time of their wives, they shall not be permitted to contract many marriages. But I do not find in it anything against the religion, because it so looks to me after going through our scriptures and ancient literature that never during any time, even in the olden days, the institution of polygamy was looked upon favourably. After scanning through the ancient literature, we do come across such instances where the ruling prince was allowed to marry more than one wife. We find the rulers disregarding the customs, traditions, usages and the lofty ideals—ideals regarded as sublime—on which stood the structure of our society, but I would like to cite before you an example set forth by one who is considered as an incarnation of God and who has placed an ideal before us. After looking through the great epic written by Valmiki—the epic which has safeguarded our Indian culture and which has sustained our culture for the last so many centuries—it appears that when King Ramchandra sat for the performance of *Ashvamedha Yagna* and when the priests and elderly persons told him that the *Yagna* (oblation) cannot be perfected in the absence of a wife, even at that moment he performed the ceremony by installing a gold idol of Sita and did not have recourse to a second marriage. This ideal lies before us and if

we scan through our classical epic, we shall have glimpse of this at every place. During the times when Lord Rama lived in the forests and when Shurpnakha implored him for marriage, Lakshman had told her that Ramchandra was a prince of Ayodhya and was likely to become the ruler of that kingdom and that he was even in a position to marry; but the latter was already a married man and could not thus re-marry. Even at that time the utterances which our Poet Laureate had attributed to Lord Rama establishes the same very ideal that the institution of polygamy was not looked upon favourably during those days. I do not understand how the restriction placed thereon in this Bill is opposed to religious doctrines. On the contrary I think that if such actions were to be encouraged then they would surely cause the destruction of the high ideals of our Indian culture and society. I believe this to be an ideal for every Hindu who professes himself to be a follower of Hindu religion and a supporter of Indian culture. It is a great injustice done to woman that the husband is allowed to enter into matrimony once, twice, thrice or even four times in the very life time of the legally wedded wife. For a woman this custom is horribly painful and demands utmost sympathy. It is another thing that since centuries restrictions have been imposed on our women folk and the women of this country have more or less been confined within the four walls of the house. Restrictions have been imposed on their social, mental and economic rights. Their tears dry up in their eyes only and are not even allowed to trickle down. But our poets, writers and authors have given a very vivid description of this colossal suffering and tribulations that the women have to endure. For a woman no other suffering is more tormenting than the distress of having a co-wife.

Now when the age of renaissance began and the eminent persons of our country began to realize their abject misery then, as a result of their kind efforts, the condition of the women folk was carefully considered over and hence from time to time such revolutionary Bills were passed in this House. At that time our country was in turmoil and then Mahatma Gandhi forced an entry into the social structure of our society. He elevated the women folk to such an extent that they could stand on their own legs. Today a keen desire for securing her due rights has awakened in her heart. The woman of the future will not tolerate this sort of oppression and tyranny lying down as she has been doing till today. She will never tolerate this sort of neglect and disrespect. Therefore, I think this time to be most favourable. The Bill that is before us should be passed in this House with great applause.

This Bill is being opposed on many grounds. I have had opportunities to hear such thing here. Obscene and dirty things are said against the women community, they are being stigmatised. Thus a propaganda is made here by

giving publicity to such scandalous slurs against the women folk. The people here have come to believe that the right to divorce provided in the Bill would result in the destruction of the structure of our society and our culture would go to dogs. I do not understand how people give rise to such apprehensions and how they resort to such talks. But as far as I have studied this Bill I have not come across anything concerning the dissolution of marriages that can be called an innovation, or anything that has not been allowed and permitted by our sacred texts and holy scriptures. All the conditions that have been laid down for the dissolution of marriages, or in what manner the marriages can be dissolved, or for what seasons divorce can be granted. I think all these conditions do exist in our *Shastras*. I myself believe in Hindu religion and culture. I am a Hindu woman. Wherein lies the glory and importance of the woman I know that also. For centuries our sages and preceptors, poets and writers have sung songs about the greatness of the Indian woman and have mentioned her in the most glorious terms. I know that all this greatness has not been attributed to female form only, they have sung songs about her noble spirit of renunciation instead. I think that this high ideal is very good for us. Not from today but from ages the Indian woman has been maintaining these ideals and the glorious history of her renunciation and ideals will for ever go down in annals of Indian culture and the history of mankind.

But in every society it has been found impossible for each and every individual, may be male or female, to live up to the highest of the ideals. Mahatma Gandhi has been acclaimed a superman by the whole world. He placed before us his ideals and though being his followers we ourselves could not live upto them. Similar is the composition of the society as also of the world. If this whole world and our Indian society in particular were to maintain the high standard of ideals then, I think, this very world would become a paradise.

Whenever some high ideal is set before the people then in order to create a proper atmosphere for it a number of things have got to be done. Take the case of the Hindu marriage system for instance. At the time of marriage the priests interpret this alliance to be so indissoluble, so everlasting that it would hold good for future births and re-births also. I don't believe this. Because while on one side according to Hindu ideals we are led to believe that this marriage alliance between a Hindu male and female lasts till eternity, on the other hand in our holy scriptures it has been laid down that according to the philosophy of *Karma*, this alliance would have continued eternally even if in previous births, the husband may have been a human being or a demon or an animal, but I do not believe in such a thing. What I believe is that marriage is just a compromise for the life time. If our married couples were to banker

upon the legal possibilities regarding the dissolution of marriages then I think that our life would become quite useless. The result of such a state of affairs would be that the people will never be able to raise and maintain happy families. If such state of affairs do exist anywhere, then under such circumstances, there can neither be the evolution of our religion nor the cultural development of our country can take place. If under any circumstances the separation be deemed essential then I think the legal right must lie with the woman. Many defects have cropped up in our present day society. I think instances are not only known to me but all the gentlemen present here must be in the know of them. A husband can marry a second time even when the age of his wife may not be much. On the other hand a woman whose age may only be 16, 17 or 18 years cannot re-marry ; she has not been authorised to get her marriage dissolved. What such a state of affairs results in ? I do not want to go in details. I very humbly beg to submit only so much that such things result in grave disasters. Legally that woman cannot re-marry. Her legal husband has no relations with her. May she lie in the abyss of the society and suffer extreme distress and tribulations, yet the society does not allow her to enter into an honourable remarriage whereby she may be able to support and sustain her children, set up a family and pass the rest of the life in comfort and ease. Under such circumstances I wish that the woman should have this right. I do not wish that this right should so commonly be used that it may create retaliation and every man or woman may begin to think that they can have separation if and when they like. As far as I think this Bill does not provide so much facilities as the people profess. The most outstanding speciality that I can see in this Bill is that in 80 percent. of our community I have seen that a *panchayat* is called and separation is effected within a minute's time. At places and in certain communities even the *panchayat* does not assemble to give its decision. Males and females are quite free and leaving each other, they can re-marry whomsoever they like. The utmost punishment the community can impose upon them is that they are somewhat chastised or ex-communicated and after giving a community feast, they are again taken back in the folds of the community. The passing of this Bill will highly benefit those communities wherein separation and divorce are considered to be very insignificant things. This Bill will impose restrictions on them also and the greatest benefit that we would have of this Bill is that our backward communities which have no cultural background will become cultured and their moral standard will be raised. This is the most outstanding speciality that I have come across in this Bill.

The strongest opposition that is being made against this Bill is I think about the question of the property, for the reason that this Hindu Code Bill

seeks to provide the daughter also a share in the father's property equal to that of the son. A number of different things are being said about this measure. Some hon. Members hold the view that by adopting such a measure the innate affection and natural love between the brother and sister will cease to exist, our heredity and our entire family system will be disrupted. I cannot understand this thing because as we see today, if a person has two or four sons then it is not at all essential that these brothers fight among themselves or kick up disputes. But at the same time we do sometimes hear of such incidents and many instances are before us that such disputes are kicked up and they become deadly enemies. So I think that if it be taken for granted for brother and sister also, that after inheriting the property they will also kick up similar disputes then, as such disputes generally take place between brothers also so they do not matter much, Moreover at that time, do the persons who profess the culture to be in danger ever try to proclaim that this inheritance of property kicks up disputes and quarrels among the brothers so it should better go ? Are such disputes in accordance with our culture ? The glory of our religion lies in natural affection, mutual love and in being on good terms with others. This is our culture according to our religion. I see many such instances where the solitary sister has got a deep affection for her brother. Loves are of different kinds, but the love that a sister has for her brother, I think, is so unassuming innate and pure that no other kind of love can stand up to it. Such an affection she bears for her brother. Our existing law provided that the property that was owned by the mother, the *stridhana*, and the ornaments that the mother possessed were inherited by the daughter. But everywhere it has been seen that the sister has shared the ornaments with her brothers and nobody has ever seen them quarrelling over the division. If the high ideals of our women folk hold good then a sister will always be prepared to sacrifice her all for her brother. There will be very few cases where such disputes will take place. If for the time being it may be taken for granted that such state of affairs will come to pass, still then I will say that this is a grave injustice. I am able to recall the case of our big *talukadars* where the brothers live extravagantly on the property left by the father. For themselves, they spend such heavy sums on the occasion of *Tij* and other festivals as might have served the sister for a lifetime. If, however, a widowed sister happens to come and live in that very home, her place is in the kitchen and her lot is none better than that of a cook. In the home where, today brothers enjoy life on the strength of the father's property, the father's wealth, in that very home I have seen with my own eyes the sister pining for milk for her young children. She too has the desire that her children should have good things to eat and good clothes to wear and that they should

receive good education in the same way as her brother's sons. But the law has sealed her mouth. She is tongue-tied and dare not give vent to her feelings. I would like, very respectfully, to ask those people, who are opposing it today, whether this is in accordance with the Hindu law and, if so, which school of our philosophy sanctions this injustice shown to woman. Hence, I think that the provision relating to the daughter having a share in her father's property is very much in consonance with the times and compatible with our faith and culture and I hope it will be considered in a very generous spirit.

In opposing this provision, several people have also averred that the idea that a woman should also have a share in her father's property took birth in the minds of those persons who are imbued with a foreign culture and who have not read Indian literature. I shall not be taking much of your time and should like to tell you briefly that this sentiment finds ample expression in our folk-songs which have existed for the last hundreds of years. This sentiment did not get into our folk-songs at the time of our mothers and sisters but has been there since the times of our grand and great-grand-mothers when there was not even a trace of foreign culture anywhere and when it had not set any kind of seal on our culture. The songs that are sung at the time of marriage in our Province contain this sentiment and I think that such songs are sung at marriages in all Provinces. I do not here want to recite the actual lines of those songs but would briefly like to state that such songs are sung amongst us at the time of marriage, at any rate in our Province with which I am familiar. I have also studied the folk-lore of some other Provinces where too a similar line of thought exists. We find a very wholesome sentiment forming the burden of these songs. The girl gives expression to her desire to have one-half share in her father's ' dominion '. The brother offers her various kinds of temptations, saying he would give her a plate full of ornaments, that he would give her horses and elephants and also enumerates the various articles he would be giving her by way of dowry. The girl replies that if she is destined to acquire all that wealth, it could also become available to her when she goes over to the house of her father-in-law and her husband but that she would rather have her one-half share here, that she has been brought up in this home and that she would like to have a share in the orchard and the tank here. Thus there is absolutely no foundation for the allegation that this sentiment is the product of foreign literature, or foreign education, or foreign culture or that it is a creation of the minds of those persons who have received their education from foreign sources. Our ancient literature abounds in that sentiment and our folk-songs would offer various such examples as reflect that feeling.

Nature has made a boy and a girl equal in the eyes of their parents. Then

why is it that a boy should have a share in his father's property but a girl should have none ? I feel that is also a kind of injustice. This is another matter that in view of the present set-up of our society some people might, per chance, be entertaining doubts and anticipating difficulties with regard to the practical application of this Bill, because the position occupied by a " son-in-law " in our society is rather peculiar. All his life he is called *Jamai babu* or *pahuna* (the Guest) and never becomes a member of that family. I feel that if the daughter is conceded this right, the result would be that the son of another family who comes in as the son-in-law could also live as a member of the daughter's family as if he were a third son to the father who already has two, and this should encourage mutual love and affection. The argument that this would strain relations between brothers and sisters or break them for good cannot appeal to me. I do not think that if this law is passed it would mean the disintegration of all our social, cultural and religious traditions. I am unable to appreciate that argument. With these words I express the hope that those people who have passed our new Constitution, who are out to make a radical change in our social and political set-up and who have conceded in that Constitution the equal rights of the women, will reflect cool-headedly over the present position of our women. Let them hearken to the call of the times. We should concede this right straightaway. Scholars, men of letters and historians have held the view, that if a society which steps forth into the field of progress, does not promptly carry out all those changes, which are urgently called for, it is likely to be left centuries behind in that field. On the other hand, if properly appreciating the call and the needs of the times, it promptly gives effect to the urgently needed changes it marches forth to a speedy progress. I hope this Bill is going to be passed by the present Assembly because here we have present, in a preponderating strength, persons who are called the followers of Mahatma Gandhi. Mahatma Gandhi was the great man who had a sound grasp of the problems and the handicaps facing the Indian women. Along with the political revolution he also stirred up a powerful revolution against our old social conventions and was soon able to root out and destroy them. I feel that the followers of Mahatma Gandhi will give their thorough consideration to this Bill and pass it after having considered it generously and sympathetically in the light of our faith and culture. In the end, once again, I wish to assure the hon. Minister, on behalf of the women, that all those women of this country, who have been able to comprehend this measure, are going to welcome it heartily and that even the women of the generations to come will feel grateful to him for having got it passed.

Shri Kameshwar Singh of Darbhanga (Bihar : General) : Sir, it has become very difficult for those of us who are opposed to the motion moved on

behalf of Government to take part in this debate after what our Prime Minister has said in this House about the measure before us on the opening day of this session. I was not present in the House when he made the statement, but if the press report be true, he has made the passage of the Bill an issue of confidence in his Government. I am strongly opposed to the measure. (*Interruption*).

Mr. Deputy Speaker: Order, order. Nothing will go on if these interruptions are made. The interruptions will only increase the time taken by the Members.

Pandit Lakshmi Kanta Maitra : Apparently the hon. Member is making a very good speech.

Shri Kameshwar Singh of Darbhanga: But I am equally strong in my view that in the present state of our country the Government of our Prime Minister is the best Government that we can have. Howsoever imperfect it may be, a better alternative to the present Government is not available. That, I think, is the view of the most of the people who do not belong to any political party. Thus, the stand taken up by our Prime Minister assumes the shape of "Undue influence", if not " coercion ", for men of my way of thinking. I would therefore earnestly request the Prime Minister to reconsider the matter and unload the question of confidence in his Government from the consideration of the measure.

I would like the House and Government to postpone further consideration of the bill till the wishes of the electorate are ascertained in the next general elections for reasons stated by the hon. Dr. Rajendra Prasad, in the note which he sent in the capacity of the President of the Indian National Congress to our Prime Minister last year.

Hon. Members of this House know that there is a great divergence of opinion with regard to this important measure of, if I may say so, revolutionary character. It affects the personal law of the vast multitude of people. It affects their social and economic life as well as the forms and customs that have grown with the various schools of the Hindu law during so many centuries. In the name of uniformity and codification it threatens to arbitrarily disrupt the fundamental social and economic structure of the Hindu community embracing all except the Muslims, Christians, Parsis and the Jews. I fully agree with the observations of you. Sir, and Sri Ram Narain Singh contained in your notes of dissent on the Report of the Select Committee on this Bill. The members of the present legislature have no mandate from the electorate even with respect to the major issues involved in the Bill. After all, the next elections are not far off and nothing will be lost if the matter is deferred till then.

I am definitely of opinion that such vital changes as are proposed in the measure should not be made in this manner. If one cares to look into the views expressed before the Hindu Law Committee, he will not fail to notice that the opposition to the Bill is very strong. I belong to that class of people which considers the *Smriti* and the school of interpretation, he follows, as sacrosanct; and the class to which I belong constitutes a large proportion of the total population of the country. We consider marriage, succession and the like as a part of our religious duty and obligation. To us these are much more than mere secular or social phenomena.

It is true that the social structure has gradually changed and is changing under the stress of circumstances. But such changes have taken place by the process of evolution and not by imposition from above. Further, these changes do not generally affect the principles on which the Laws governing the various Hindu societies are based. Now, the question is whether the changes proposed in the Bill are such as have been accepted by the people in general and require just legal sanction. My answer to this is emphatic 'NO'. No doubt, the authors of *Smritis* and their interpreters made changes from time to time but they did so when they could enforce them by the popular support they had. The bulk of the people had abundant faith in their learning, in their foresight, in their purity of purpose and above all in their conduct. The authors of this proposed Twentieth Century *Smriti* have no such background. They do not have in the hearts of the people the status of those ancient *Smritikars* whose injunctions govern the lives of so many people even today. The diversity perceptible in different parts of the country goes a great way in establishing the fact that popular acceptance and not imposition from any central political authority has been the sanction behind the personal law of the Hindu. Unity in diversity is the chief characteristic of the Hindu life and religion and we should not take the seeming diversity as an evil which must be instantaneously removed.

The fundamental difference between the outlook of the ancient law givers and the present day law-givers is that, whereas the basis of the formers' consideration was purely spiritual, the basis of the latter's consideration is grossly material and to accept it, is to give a go-by to our philosophy of life, to the continuity of our tradition and to the foundation of our culture. I, for one, am not prepared to do so.

Besides this, I apprehend that there will be practical difficulties in implementing the provisions of the Bill. Just imagine how long it will take Government to educate the people that they should go to law court for getting their marriages registered. Just imagine what complications and confusion will the provisions for void and voidable marriages create. Just imagine what

havoc will the provision for the dissolution of marriages and divorce play in the domestic life of the people whose conception of society has so far been quite different from the one on which these provisions are based. I do not agree with the view that only hard cases will come up for remedy. My own fear is that many interested persons will come into the picture to disrupt the domestic life of their neighbour relatives etc., for their selfish ends. Similarly, the provisions regarding succession will make the management of property difficult and become a prolific source of intrigue by designing persons in the society. Lawyers and law courts may prosper but families will be broken up and domestic peace will decay.

The report of Dr. Dwarkanath Mitter, one of the members of the Hindu Law Committee, embodies the opinions of the vast bulk of Hindus. The facts on which he has based his conclusions are irrefutable. The report of the other members of the Committee is merely an attempt to explain away the irrefutable facts mentioned by Dr. Mitter in support of his contention. It appears that the Majority of the members of the Committee had already made up their minds on major issues and took no note of the public opinion expressed before them in different ways. I wonder how the Government of India of today which is so sensitive to public opinion has considered it proper to bring a measure of this kind before this House. For the sake of satisfying the sentiments of a few so-called " progressive " element in the Hindu Community, it should not have proceeded with the measure which is opposed by an overwhelmingly large number of Hindus. If those who advocate the adoption of this measure go from village to village and collect the reaction of the Hindus on the provisions of this Bill, I am sure that they will hardly find satisfactory support. At least in my Province, the public opinion is decidedly against this Bill.

Dr. B. Pattabhi Sitaramayya (Madras: General) : Sir, the moment I rise before you I hear certain utterances from friends. Some say " Support ; others say " Oppose. "

Shri B. L. Sondhi (East Punjab: General) : You will do both.

Dr. B. Pattabhi Sitaramayya : Perhaps I am doing both, because on a matter like this it is our duty not to be dogmatic. Only great men and fools are dogmatic and I disclaim being either. It is much better to string our thoughts with the thoughts of others and try to evolve a G.C.M., a thing which we learnt in our early days of arithmetic,—the greatest common measure of agreement upon such vital questions as the structure and functioning of society, which is a living organism and not a dead joint stock company with its own memoranda, and articles of association which are liable to be changed any day by paying three rupees to the Registrar. This society which we have

inherited and of which we are proud to call ourselves members has been in existence for perhaps thousands of years.

Babu Ramnarayan Singh (Bihar : General) : Since the creation.

Dr. B. Pattabhi Sitaramayya: Nobody knows when it started. At least I can say from the evidence that we have before us in Kautilya's *Artha Shastra* that this had attained its perfection 2300 years ago. The same problems of marriage, of crime, of punishment, of psychological complications, of political puzzles, that were treated by Kautilya in his *Artha Shastra* are before me to day without one iota of change. I would ask friends who have not read that book to read it. Read the *Sukra Nithi Sara* : read the other political works of our ancient Hindu law.

Shri L. Krishnaswami Bharathi : Kautilya's *Artha Shastra* is not unfortunately available.

Dr. B. Pattabhi Sitaramayya : It is quite available for those who have a mind to get it.

Shri L. Krishnaswami Bharathi : But I have tried my level best.

Dr. B. Pattabhi Sitaramayya : I would therefore, urge the House to look into the antecedents and the conditions of progress and conditions of evolution which have characterised the changes in what we call the " Hindu society ". I do not say that we should be proud of Hindu society and Hindu culture, but after all what is called Indian culture is largely Hindu culture and what is called Indian society is largely Hindu society, and if other people have come and mixed with us—the Jats, the Moghuls, the Turks, the English and others—they have perhaps assimilated many of the good points in us and they have enabled us to assimilate many of their own good points, so that the confluence of these cultures over a thousand years has enriched, both in volume and in content, the stream of our own national culture. Now, we are the inheritors of this proud heritage. How shall we deal with it ? Is there a philosophy behind it or is it merely a random growth ?—an accretion of conditions, an amorphous composition in which parallel forces are in juxtaposition without organically combining with one another or is it a solution and an assimilation of all the various factors, with the merits dissolved and the demerits left on the surface ? These are the points which we have to consider. Have we considered these points before embarking upon this mighty reform? Who has initiated this reform ? When was it initiated ? In whose time was it initiated ? Has it been taken up after the National Government has come into being, or is it merely a legacy of the past Government which we have taken on hand through the Secretariat ? What is our initiative ? What is our part in dealing with it ? Society, I told you, is a living organism. It has certain philosophical truths behind it. It has economic

propositions before it. Take Hindu society. Have you come across any society in the world which is more socialistic, inherently and internally, than Hindu society ?

I have got fifty acres of land. I have got two sons. My two sons are each heirs to only twenty-five acres. My first son has four sons. Each boy gets only six acres. Is property allowed to accumulate in our system of inheritance ? Not at all. It is a socialistic structure of the supermost kind. You want to destroy this socialistic structure and then you want to substitute an individualistic civilisation where each man owns his property, where property is inherited not by birth, but by survivorship. What happens ? Individualistic property comes into being. Perhaps the next step will be Dr. Ambedkar's Bill on a law of progeniture for the common man. Then you will create and maintain an aristocracy. You bring into existence a class society, not a classless society. A classless society where learning and property, learning and wealth are well balanced gives place to a society in which wealth reigns supreme. That is exactly what happens in the West. That is exactly what cannot happen in the East. Here, through a system of social organisation, we have balanced the wealth and the culture, and then having brought them into existence, we have attached greater value to culture than to wealth. Wealth has taken a subordinate place. Now what are you going to do ? You allow a lawyer to amass ten lakhs of rupees. He is the supreme master. He has obtained all the wealth that his brothers could have given him in sending him to England and making him a Barrister-at-Law. But the gains of his learning are his own exclusive property under the law which has been brought into existence by the British—thanks to their ideals. Now, whereas the other people, the other brothers, the agriculturists as well as the traders who have gone through the same process of righteous labour, have to divide their property with the educated Barrister-at-Law, the Barrister-at-Law is exempt from sharing his properties with those two brothers. Is this justice ? It is outrageous nonsense compared to the noble standards which have been adopted in our society.

Now let us pause here for a moment and ask a question: Have you appointed a Commission to go into the social, political, economic and the moral implications of the structure and functions of this society ? Have you got a report based upon a study of the psychology that lies behind this structure which has endured the buffets of time and circumstance for a period easily and admittedly, of five thousand years and perhaps which has gone back to thirteen thousand years and may be, possibly to thirty thousand years, because there are all these three versions about the age of the Mahabharata and the Vedas, about the age of our society and ancient

civilisation. How is it that you don't do that. If you want to give tariff assistance to a little quantity of iron that is being imported from Antwerp, you appoint three people drawing Rs. 3000 each, constitute them into a Tariff Board, obtain a report from them based upon the evidence that has been led by all the capitalists in the country, then you consider it in the Finance Department, you place it before the Assembly and then you grant that tariff weightage. What have you done with regard to our society ? You snap your fingers at it—this ancient society, this relic of ancient barbarism, this vestige of antiquated stuff! No; you say " let us go the whole hog ".

We have cast our universities after the style of London ; we have adopted our legal system after the style of High Courts in London and we have carved out Legislative councils and legislatures after the manner of the Parliament in the West, and now it only remains for us to copy the Western society. Western manners. Western social institutions and Western civic laws. Please do not mistake me. I have been in sympathy with divorce for a long time. I have been thinking of divorcing my wife and I have also heard that she wants to reciprocate the honour. That is not the point.' I tell you I am in sympathy with many of the items of this measure. But I want to tell you what kind of approach and attitude you are adopting towards the institutions of India after you have attained Swaraj. This summary, this absolutely impromptu method of dealing with this question does not appeal to my fancy, much less to my conviction. But I know that you will tell me: " Oh, this Bill has been hanging fire ever since the Congress left the portals of the Legislature." Yes, it has been hanging fire! You however, remember that in 1938 July, the Congress passed a resolution that it should walk out of the legislature because armies had been sent to Egypt and to Singapore, which were then considered the frontiers of India. So, as a protest against that act, and as a protest against the breach of the pledged word of the Government who said that they would not send any armies abroad without the specific permission of the Legislature, we walked out and ever since we never walked in until 1946. During this time, men who were not patriotically inclined, men who were the proteges of Western civilisation, men who had spent their whole time in England or abroad, were put into a Committee and they evolved this formula for us. I got in 1944 October the first -report on the Hindu Law Reform Committee while we were in the Ahmadnagar Jail. Now the main inspirer and agent of this measure was Shri B. N. Rau to whom we owe all that we have achieved in the New Constitution. He is a lawyer noted for his knowledge of constitutional law, case law, codified law and customary law and one who has done yeoman service to us. He was a Judge to the Calcutta High Court in Bengal where Dayabhaga prevails. I suppose you know Mitakshara prevails in

Madras and one or two other provinces while Mayukha is the Law in Bombay. This gentleman who never had any experience of Mitakshara and who was a Judge of the High Court of Calcutta and whose knowledge of law is absolutely unquestionable has initiated this. Later on the Congress Party or the popular party never had the opportunity of discussing this question in the Central Legislature. When Mr. Asoka Roy came as Law Member, he said that he would not touch this Bill even with a barge pole. (*Shri Mahavir Tyagi*: What is a barge pole). A barge pole is a pole which is used to drive a barge on the waters.

After all, this matter has come up ; and as if we have been waiting for it in eagerness and expectancy, we have taken this up without so much as mentioning a word about it in our election manifesto.

Have you ever come across a party which draws up a comprehensive election manifesto covering all questions from China to Peru and contemplating the nationalisation of the key industries, abolition of drink and zamindaries and various other things, but never saying a word about social reform which is the central factor relating to India ?

It is not merely a piece of social reform. In India society is closely mixed up and intertwined with religion. Religion is the sanction behind everything. Now I am a most irreligious man, but I have the greatest regard for the sentiments of my neighbour. Otherwise, I am an uncultured brute. If I want to practise my heresy upon the convictions of others then I am not worth the salt that I eat. Now then, not merely religion, but economic factors, social factors and other things are intertwined. The joint family system is the creation of ages. What is this joint family system ? It is an insurance trust ; it is a co-operation union; it is a labour society.

It is a labour society where all the poor brothers toil; it is a cooperative society in which all the brothers live together—each for all and all for each, and it is an insurance union in which the widow of the deceased brother is the care and charge of the surviving brothers. This is what the Mahatma said when he opposed insurance. But I know everybody is not Mahatmaji. The Joint Hindu Family is a noble combination of these three features based upon a religious background and held together by a social bond. Can you produce an equal to it by all your labours, by all your statutes and by all the Halsbury's Laws of England ? You cannot do any more than you can produce an equal to the economy of hand-spinning which the Father of the Nation rediscovered. Permit me, with my usual immodesty, to say that I wrote a Book in 1938 which is called " The Hindu Home Rediscovered ". As I entered life as a heretic, brought up in Christian traditions and western heresies, I began to discover in every festival, in every ceremony and in every religious

observance of Hindu society there was something deeply religious, uplifting, inspiring and ennobling. When I lived with my sisters and my brothers, I rediscovered the 'Home and after twentyfive years I ventured to write this little book in which I have tried to idealise these things. I would not say that these ideals do exist in life, but when you judge an institution, you must judge it in its pristine purity, and not in its degenerated imitation. If you want to idealise any concept, popularise any institution and resuscitate it, then put it before the nation as it was conceived and get the consent of the nation for it. I can assure you that wherever I go, I always state the *pros* and *cons* of every proposition on this Bill. This Bill may be good in parts as the Parson's egg and it may also be bad in parts. If you say that you must do this for women because women have come to their own, yes, do it by all means, but why be in such a huffy ? I want them to come to their own, they have come to their own, and in the next Assembly I feel sure my sisters can fill half of the seats; out of five hundred, there can be easily two hundred and fifty women if they only make up their minds.

Shri L. Krishnaswami Bharathi: Will you allow them ?

Dr. B. Pattabhai Sitaramayya: I admired Rajkumariji when she said before the Provincial Model Constitution Committee that women did not require any reservations. I thought it was rather an audacious statement for her to make and a great responsibility to shoulder but I know now that they are quite able to take care of themselves. If half a dozen lady members of this House can drag us by heels and make us take up this Bill, I wonder what our position will be when there are two hundred and fifty of them here. I am not joking. If I have a voice at all at the time of selection, I may assure you that I will do it, notwithstanding Mr. Rohini Kumar Chaudhuri.

[At this stage Mr. Deputy Speaker vacated the Chair which was then occupied by Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen)]

In this connection, I tempted to read a little statement that I have here from *Picture Post* of March 12, 1949.

"From woman comes an incessant call for equality. What does she mean by equality ? From the material point of view at least, she has the lion's share. Probably ninety percent. of all advertisements cater solely for her. Film producers say eighty percent. of films are made for her. Fiction publishers appear to think entirely in terms of woman. As for clothes, woman has a wide choice and range at reasonable prices, while shabby, thread-bare man can only gaze for long at a few miserable suitings in some sombre shop window and think of the fantastic prices charged. With our prophetic eye, let us gaze into the future. Woman has got more than equality and man has become a spinster's spaniel existing on woman's scraps and everything is beautifully

lukewarm. "

I may assure my sisters that nothing will be lost by their exercising patience. I was the other day questioned for having appeared on an orthodox platform with a Swamiji from Benaras and when I saw Prabhavati Raje—she was a wonderful woman worker—leading the audience completely with her like the Joan of Arc of old, I saw the danger of letting orthodoxy do this. On invitation I went there and I spoke for an hour, and I was taken to task for appearing on the opponent's platform. I said, " What is the use of speaking to those who are converted ? I must convert those who are not converted." I fully believe in educating the people about this new Hindu Code Bill. You must not precipitate matters and decide this issue by force of majority. But whenever this may happen, it is our duty to educate the people. Let us produce the result by popular educational propaganda. After all you have not nationalised the key industries. Where has this item gone ? The capitalists struck and we had no money and we had to eat our words,—I believe in patience. One of these days things will be all right. We are afraid to do any nationalisation now. We are hesitating to abolish the zamindaries. We are hesitating to proceed with River Projects. We are hesitating to proceed with the development of cottage industries,—all because inflation is staring us in the face, and we cannot make all these necessary improvements. We are face to face with conflicts, contradictions all round. Life is not a smooth path like a journey on a railway. It is like a motor car journey upon bad roads in the midst of congested traffic. I ask you whether it is not the duty of the members of this august house to undertake the very useful and very fruitful task of educating their masters. What happened in the year 1878 when Robert Low said after the extension of the franchise. " Let us go and educate our masters. " Our masters are outside. We are not the masters. The Ministers are not our masters. We can deal with them as we like. We may dispense with them tomorrow if we do not want them. That is our right and that is our privilege and our safety also. Therefore I say that this is a matter in which we should go slow. I am second to none with regard to my love for social reform. I was a social reformer even in the year 1898 when I was in the B. A. class, which was 51 years ago, long before half of the audience was born, and ever since I have sustained that interest. I very early came under the influence of the Brahmo social reformers and I have fully imbibed the reformist spirit from the Christian missionaries under whom I studied from my fourth form to my B. A. classes.

Therefore it is not what should be done on the subject that matters, but how we are going to do it. We have got to remember the political bearings as well. Tomorrow you are appearing before the Polls. What a sad plight we

were in yesterday ! I was not here yesterday ; otherwise I should have witnessed the scenes with my own eyes. I went to Alwar and returned only last night at eleven o'clock and the first thing that my wife told me was that there was a lathi charge and some people were dangerously wounded and so on. Naturally the news is exaggerated from lip to lip and from ear to ear. It is a most pathetic spectacle again that I witness today opposite to me. Generally I speak under an impulse or inspiration, but today I speak under an irritation of the sight of three women Police sitting opposite to me in the gallery. Has it come to this that this house cannot get on and the women that are in attendance in the gallery and below cannot be trusted except under the care of the baton of the women Police ? Are you really proud that these police women should arraign our sisters hereafter? We have had enough of policemen. You know this is the most tragic development of this Bill. The Doctor will kindly note and if you cannot come to this house without the protection of the Police, women police for the women and men police for the men, then woe betide our progress, our legislation and our Assembly. I am really very sorry. I now leave the general observations and come to one or two salient points with which we are concerned today here and before that I shall submit a word about the progenitors of this legislation. I am very sorry that it should have fallen to Dr. Ambedkar's lot to pilot this Bill.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : I am not sorry at all.

Dr. B. Pattabhi Sitaramayya : I know ; otherwise you would not be sitting so proudly in your seat. The doctor knows what I said about him. I referred to the indomitable, irresistible, unconquerable spirit of Dr. Ambedkar,—for good or for evil, whatever it be. We want always to say that the spirit is there and, therefore, we admire him, but at the same time, he is out of tune with society.

Shri L. Krishnaswami Bharathi: He is perfectly in tune, absolutely in tune.

Dr. B. Pattabhi Sitaramayya : I do not call him a misanthrope, but he is not a normal anthrope, that is all I can say; the training, the surroundings, the environment, the culture, all these put him out of tune with the spirit of the nation. He is one of our best intellects, there is no doubt about it and I wish he would have health and prosperity for a long time, but all this does not mean that we accept his point of view with which we came into conflict even in the Constitution when we passed that steam road roller law of a common civil law. Some of us resisted, though in vain, with the best of our might and main. Now I recall to your mind something that I said in the first day when this Bill was introduced in this house. I hope many people have forgotten so that they may not blame me for repeating what I am saying. In fact, I myself have

forgotten the main point, but that point was that, I take it., that social reform in this country must be effected through the intercession, through the advice and through the inspiration of a Social Council we must bring into existence. I then gave the example of the Church Council of England in which the ecclesiastical dignitaries form the main element of strength and whatever they bring in by way of changes in life or law, the House of Commons accepts without changing a comma or a full-stop and that is, as it ought to be, in regard to religious or social matters and let us adopt such a course. In Germany there used to be an Economic Council which dealt with economic matters which require expert knowledge. The *Reichstag* used to accept the recommendations of that body. Let us, therefore, go slow and deliberately so that we may know exactly where we stand.

Now I come to a few points in the Bill and I won't detain you long. The Bill contains some very good points. I like civil marriage on the top of sacramental marriage. Mere civil marriage is like executing a document in order to register a transaction between two people. It is a contract. The moment a document is written, it gives rise to strife, whether the intention is correct, whether the consideration is passed, whether it is valid in law etc. but when it is a sacramental marriage, there is no appeal against it. The old *purohit* is never called upon in life to stand up in a court of law and give evidence as to the genuineness and the *bonafides* of marriage. The marriage is there and nobody questions; it is like the integrity of the spoken word. When the nation has preserved the integrity of its spoken word, which it has lost during the British time and under the influence of the law courts, then I say, we shall have recovered our character once again. But there are circumstances such as those under which a friend of mine suddenly discovered on the marriage platform that his daughter and his would be son-in-law were of the same *gotra*. They could not possibly give up the marriage even at least for economic reasons, let alone religious reasons. So immediately they passed through the sacrament and then went to the Registrar of marriages and registered it. That it should be open to us to register our marriages is a great privilege and I also like that the question of the share of the property to the girls must be settled once and for all. For a long time I have felt that the daughter must be an equal inheritor of the father's property with the sons. Now I see that it is going to bring about endless complications in our social and economic structure. There is a friend of mine who has six daughters and one son and I asked the girls one after another separately and individually as to whether they would like to have a share in the property of their father. No: they said, " this will give rise to quarrels with our brother. We do not want this. We have our husband's property and that always remains with us. " It is not

however available to them as the *stridhana* would be available to them. *Stridhana* is a most wonderful thing, and I should like to know where in the world is there a parallel to this *stridhana* ? The *stridhana* is an institution by means of which the *stridhana* given to the girl at the time of the marriage becomes the absolute property of the girl which cannot be touched by the husband or by the father or by any human being at all. It is the reserve fund of the family which she is sure of and when her husband is very ill, she goes to the market to sell the jewels away for paying the doctor's fees and if the husband lives well and good, but if he dies, it is the last service to her Lord. Such a reserve fund is cast off and a share for the wife in the husband's property under T. V. Seshagiri Ayyar's Bill, which became law about 15 years ago, has now come to be recognised, but after the death of the husband, in equal measure with each of the sons and only as a life interest. Our law, in spite of the British people's unwillingness not to interfere with the religious institutions of this country for fear of their political stability being disturbed, has been slightly changed as has been already described by one of the earlier speakers and yet it is not sufficiently changed. The unfortunate feature is that the British people felt loathe to interfere with the social customs of this country for political reasons and therefore the law has become petrified. In every country custom goes on changing and when the King adopts a change in social customs, immediately that becomes the law and it sets the tone and the pace for all society. But unfortunately in our country for a thousand years we have not had indigenious kings and after the British came, they positively resisted all temptation to make any social changes in the social set-up. Therefore the custom has become petrified and it is that custom, that petrified custom which we must make plastic, which we must make elastic, which we must make impressionable and therefore, mutable. Instead of doing that if we suddenly throw one stone of law against another of custom, both the stones break and that is not the way of achieving this change. Changes in this customary law must be set in motion in order to bring about social changes.

Now with regard to this custom for the girl's share I am quite willing that she should have a share, but I wish to make an alteration and that is that the moment she marries, she becomes a partner in the husband's property and that will not give any chance for the misbehaviour of the husband as it sometimes happens unfortunately. Then we go to the divorce question. I have spoken to many women. This morning four women came to me. They are good people, highly cultured, and there was also one among them who was introduced to me as one who had been abandoned by her husband, and they said, it is not only those who are happy that withheld their support from this measure, but also those who are unhappy, the unfortunate victims of man's

fury and tyranny. That is not the point, I said to them. The point is this. Ninety percent of our marriages are excellent but what about the remaining ten percent ? They want relief. In India we marry and love, the English people love and marry and then give up their love, because what is called love at an impressionable age is a fanciful affair. One does not know what it is. In Hindu society there is a law or rule that in respect of marriage *Shree, Kulamu, Roopamu, Bandhu Shreni and Sampradayam*,—all such things should be considered. All these have to be considered before a marriage is settled. *Shree* means *Sampatti* or prosperity, then comes *Kulam* or caste and position, and then *Roopamu*, that is appearance, *Sowndariya* or beauty; and then *Bandhu Shreni* or collection of relations and then there is *sampradaya* or the tradition of the family. All these five have to be carefully considered. Can a girl of eighteen—quite marriageable in age—select by judging, all these things ? Can she distinguish between one and another among these things ? No. The other day I asked my wife's sister's husband's sister. No, that is not a distant relationship, you know, my wife's sister's husband is my brother-in-law and his sister was married. But I learned that she had said something to her father before her marriage. I went to her husband's house, with her husband accompanying me into the inner apartments and there I said to him, " Do you know this girl never married you ?" He was aghast, half angry and half surprised. " What do you mean ?" he asked. I said, " I mean what I say, she never married you." " Why ?" " She has married this, electricity, this motor-car that is in this house." The story is that the girl had said to her father " I don't care to whom you marry me, provided there is electricity and motor-car in their house." The poor girl of sixteen or eighteen, how could she judge of things and conditions ? She simply thinks, " I have been brought up in this house by my father, he gets twenty thousand rupees a year and there is electricity here, there is a motor-car, and a palatial house. I should like to have the same conditions there also." That is all. But the English mother always complains that her daughter does not " make good ", that is the expression, " My daughter does not make good " she says. That is, " My daughter is not able to keep a bevy of young men round about her, dancing attendance on her, standing her bills at the cinemas and restaurants and so on." That is what the mother wants. Don't nod our head that way please. What I say is true. **Pandit Lakshmi Kanta Maitra:** I am supporting you.

Dr. B. Pattabhi Sitaramayya : Not you, but the friend behind you.

Shri R. K. Sidhva: Are you referring to me ?

Dr. B. Pattabhi Sitaramayya: No, to your neighbour. What happens in England ? The mother is always anxious that her daughter should be able to attract the attention of half-a-dozen suitors, and it is then for the parents to

select one out of them to make an eligible choice for a son-in-law. But the mother always feels jealous of the maid-servant, because the maid-servant is able to make good, while her daughter is not able to. That is the tragedy. What does the maid-servant do ? At eight o'clock in the evening she changes her apron and gets into her clean smart gown and goes away. " Where are you going ? " " My lover is waiting outside, and I must go." " No, no, my son-in-law is coming now." " Hang yourself and your son-in-law by the nearest tree. My lover is waiting and I am going."

Shrimati Renuka Ray : You have, a very poor opinion of women, whether Indian or foreign.

Dr. B. Pattabhi Sitaramayya: But I have a very high opinion of my wife.

Now then, the mother complains that " that woman is able to make good and attract a number of men, but this daughter of mine is not able to attract them." And so the mother is sorry. That is the fashion. That is the custom of the country. That is the order of the day. And there is nothing wrong in it. That is the system which has come into being. Go to Malbar and see the *Marumakkattayam* system. That is an altogether different thing. For three years you may study it and still you will never understand its secret. But it is a beautiful system, and my friend Mr. Thanu Pillai was against changing it at all.

Sir, your predecessor gave my predecessor twenty minutes after the bell. But I will take only two minutes more.

Now it is not too late to mend. We have not gone too far. It is well that we have discussed this matter, and discussed it seriously, so thoroughly and so sombrely. We have given so much attention to this subject. Now what shall we do ? Shall we proceed with the measure ? I appeal to the hon. the Law Minister to withdraw it and then put it up—and a more stringent measure next time—, with due authority and sanction from the electorate. Then I say no man dares attack us. He will be summarily shot, because I will have the sanction of the country, I will have the election manifesto ; I will come armed with that power, that strength and I will have a right to do it. Now you come without authority. You simply depend upon four women police for your protection. That is a pathetic sight for one, for any progressive Congressman to witness.

Then again, there is another thing. I trust and hope that whatever may happen—and I hope that the Bill will not be proceeded with— but if it should be proceeded with, I feel that full freedom may be given to every Member of this Assembly to vote as he pleases. If that is given, half the sting is taken away. But we have already fallen into the trap of allowing this thing to go on. Now, friends, let me warn you. This will have a serious repercussion upon our coming election. After all

Shri Mahavir Tyagi: Postpone elections for another five years.

Dr. B. Pattabhi Sitaramayya: After all, remember that we are here as the representatives of the people and after all, remember that ninety percent of the people belong to one community, bound by one social law and one civic institution, one patriarchal system, all this is there, and people are not so intelligent as to discriminate between one thing and the other. They only feel irritated. They are already irritated by more than one circumstance. Yesterday's demonstration was not so much a protest against the Hindu Code Bill as an expression of a certain sullenness and anger of the people with the Congress and Congress institutions. It is no use our concealing it, wherever I go I feel I am assailed and attacked. But through my garrulity, my long-windedness, through my talkativeness I manage to get over the thing. But at the same time, I know on what delicate ground I am travelling. I speak not merely as a critic of the Government, but as a responsible member of the Congress who has given percent support on all occasions to this Government. I say however that he is not a well-wisher who simply flatters, or conceals the truth from the Government. Perhaps you remember that last spectacle—not a scene in Hamlet—a scene in the drama of Germany where the Kaiser on the 9th November 1918 summoned all his generals and asked them to speak. Nobody would speak, they were all silent. Then he said, the Kaiser orders you to speak, and then Gen. Ludendorff spoke for when the Kaiser orders, and if he did not speak, he would be shot. Just as when Queen Victoria asked Prince Albert to open the door. She said, " Dear, open the door " but the door does not open. Then she says, "The Queen of England orders you to open the door " and then the poor fellow came and opened the door. So it was with the Kaiser, and Ludendorff said, " Your Majesty, there are only twenty-four hours for you to escape across to Holland. " Then the Kaiser asked, " Why ?". " Why ? because the army would not fight ". The Kaiser said, " I will lead the army myself." But the army would not fight and in twenty-four hours this man was transferred. When an unpleasant truth is said, please listen to it, because there is in it nothing but the best wishes for our conjoint prosperity and success. If not on principle, if not on sound morality, at least on expediency please reconsider the position and make it possible for the people to go along with you.

Acharya J. B. Kripalani (U. P. : General) : Sir, in some quarters here is an apprehension that I may talk against the policy of the Government. Though I have spoken in this house only once, yet this apprehension exists in some quarters and I want to allay that apprehension. I stand here to support the broad principles of the Bill. I do so because I do not want this Government to resign upon a side issue, upon a social issue. I want it to

resign on more substantial, political and economic issues. I would rather want it to resign, for example, as any other Government in a more democratic country would have resigned, on the issue of the sugar muddle, by which infants of the poor could not get sugar but tons could be had by those who were prepared to pay fancy prices. On such issues, if this Government goes, there will be no regret but I do not want it to resign upon a social side issue . . .

An Honourable Member : Sugar is not more important than this measure.

Acharya J. B. Kripalani: Yet it is not as sweet. Even then I would not have come to support this Bill but for the pressure that I had from quarters from which I could not resist such pressure. I was told at home that I must support this Bill. I said that I was innocent of a knowledge of the Hindu law, that Hindu law ran into volumes and there were many volumes of commentary and how could I support or oppose a thing which I had not understood. Then I was quickly told " I can make you to understand it.

" **An Honourable Member**: Who was your teacher ?

Acharya J. B. Kripalani : So I submitted myself to a few curtain-lectures. I was assured that my teacher had been instructed by the highest authority in this Assembly, the great Dr. Ambedkar himself. After the curtain-lectures were over I was just as wise or as foolish as I was after my teachers in school or college had instructed me. I came to the conclusion that my teachers were more foolish than myself.

When I was a professor I thought the students would pay me the same compliment. Knowing that, when I entered the class I always said " Gentlemen, your presence is assured and after I have marked the roll call you are free to go, because I know you will not give me more credit for my learning than I gave to my teachers. "

Sir, I am pledged to support the Bill and I must support it, because I know that even though my wife may be absent, when she comes back she will not only take financial but moral and intellectual accounts from me.

For me, Sir, it is not a question of religion in danger : it is a question of my home in danger. Much has been said about Hindu religion being in danger. I am afraid I cannot see the point. Hindu religion is not in danger when Hindus are thieves, rogues, fornicators, black-marketers or takers of bribes! Hindu religion is not endangered by these people but Hindu religion is endangered by people who want to reform a particular law! May be they are over-zealous but it is better to be over-zealous in things idealistic than be corrupt in material things. It is this mentality of ours that brought about the death of the Father of the Nation. It was supposed that the murderer was a better Hindu

than the person who lived according to the highest ideals preached in the Gita and in the Upanishads and whose life was lived in the light of the teachings of our scriptures. I would wish the Hindu community to divest itself of such false notions about their religion. Our religion was not made by murderers and thieves; it was made by Sadhus, Sanyasis and Mahatmas.

Yet, there is the other side of the question. A great deal of confusion has been caused, for one party says that religion is in danger and another party says that the modern religion of progress is in danger. If you do not support the Bill you are a reactionary.

I will tell you how I was converted to support the Bill. One reason I have already told you. Another reason I will give you now.

There was a woman and she whispered to another woman " Kripalani won't support the Bill : he is a reactionary. "

Shri B. L. Sondhi: Were they both members of this house ?

Acharya J. B. Kripalani : They were hon. Members, not members. She in confidence told me " I protested and I said Kripalani is progressive." So I was put on my honour. You see what subtle kind of propaganda goes on. One woman tells something to another woman in confidence and she brings the story to me. Now how am I going to act ? I cannot consider myself reactionary and not progressive: I may be called a non-Hindu but for a modern man not to be modern is a greater stigma than to be without religion. I may not believe in God, but how can I not believe in the God of progress as is in the West?

I will also tell you why the first woman said that I was a reactionary—it is a very interesting story—but only if you promise not to interrupt me by your laughter. I happened to be the Chairman of the Fundamental Rights Committee. In the Fundamental Rights Committee the proposition brought forward was that it should be the fundamental right of women not to be in purdah. Of course I am in favour of all women going without purdah—and what male will not. I admire those people who would not, but I am not one of those admirable people. I said that I have no objection to this clause going in the Fundamental rights, provided that all purdah disappears—the ancient purdah and the modern purdah. Take a round in the City of Delhi. It is very difficult to see the face of a woman. There is always a mask. (An hon. Member: The powder) If the ancient purdah is to be removed the modern mask may also be removed because the modern mask is even more complete than the purdah. The purdah you can take off at will, but the mask can only be taken off at home and by certain chemical processes.

Lest you may misunderstand me I tell you that I am a great believer in human equality. And in humanity I also count womanity. I want that this Bill should be passed because it gives us equality with women. I think that this

Bill is in the interests of our equality. I have always thought that in comparison with women we are at a very great disadvantage. First of all, nature has put us at a disadvantage, because if you think a little, you will admit that everything that a man can do a woman can also do. But there are certain things which a woman can do which men cannot do—not even in our imagination, not even in our dreams, not even in our nightmares. I cannot conceive.

Some Honourable Members: No, you cannot!

Acharya J. B. Kripalani: I was talking of conceiving in an intellectual sense. But since you have already found out my meaning I need not dilate upon it. (*An hon. Member* : Oh, no.) But I have often been curious and have even asked women " what is this excruciating pain and what is this superb joy that you have in conception ?" and they only smile at my ignorance and give no answer. I have again asked them what pleasure they have in nursing the baby at the breast. Then also they smile at my ignorance and give no answer. In these matters I think we are at a very great disadvantage. They are great creators. Artists create inanimate objects, women create images of God, which sometimes degenerate into images of Satan. In these things, of course, nature has put a kind of block in our way and we cannot achieve equality with women. But in many other things we can achieve equality with women.

So far as the question of women achieving equality with men is concerned, they have already achieved it in India. You know that as soon as we had Swaraj, we had a woman Governor. Two centuries of independence have passed in the United States of America, and there are fortyeight States, but I do not know if even once they have appointed a woman as Governor. Of course my knowledge of history may be old and I speak subject to correction, but I believe no woman was appointed as a federal Minister. I may also say that in a country like England, where female education is widespread, I do not know whether up to this time there has been a woman Cabinet Minister. I am not talking of the many auxiliary Ministers that we have here too—they are also called ' Ministers '—but I am talking in terms of Cabinet Ministers. So far as I know, there has not been one in England. Then I do not know whether in England and America there have been woman diplomats—ambassadors. And yet you must remember that one of our star ambassadors is a woman.

Shri R. K. Sidhva: We are proud of our women. Sir.

Acharya J. B. Kripalani : Well, Mr. Sidhva thinks that I am not proud. I am very proud of this. But I am thinking in terms of equality, not of pride. I say, " we have granted women equality, and now shall we be given some equality with women ?" I am very much oppressed because I am after all an old man. I have learned that old age is to be respected. But when a chip of girl comes

into my drawing room I have to act just like a jack-in the-box and pop up.

[At this stage Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) resumed the Chair.]

I did not do that in former days. Not only that, may I tell you, Sir, that even when my wife comes in the drawing room I get up. Do you know why ? Because some boorish young man may be sitting there and he may not know the modern manners and he may not get up; just to give him an example, I rise. I want that there should be equality, because you just see, I as a male am obliged to get up when a female comes, while I know that when even our Prime Minister or the President or the Congress enters a room, I have seen young women sitting in their seats. This is a very great injustice to the mere male. My experience has been that if there is a quarrel between a man and a woman in the bazaar or in the market-place,—because I do not know about secret quarrels—or in the club, and supposing a man hit the woman, do you know what would happen ? There would be almost a riot and everybody would call the man a coward and rightly too. But supposing the man was beaten by a woman, do you know what would happen ? I think he would look very ridiculous and instead of anybody sympathising with him, he would be the object of ridicule and rightly too. Whether we beat or are beaten, both ways we are the losers. I want that this balance should be restored and there should be some equality to protect the mere man.

There is yet another thing. Not only in society are we at a disadvantage, but the law is also against us, as even our Law Minister will admit. Supposing a man runs away with a woman, the man is responsible in law. Supposing a woman runs away with a man, again the man is responsible. I have it on the highest authority, very modern authority, that it is the woman who is often the pursuer. Whether we are the aggressors or they are the aggressors, irrespective of aggression, the law comes down upon us. We are sufferers both ways. I would, therefore, request this house to bring about some equality, so that we men may be able to breathe more freely, so that if we are kicked, we may kick equally freely without ridicule, without the law coming to the help of the stronger party, namely, woman. You can now understand why I support this Bill.

Let us now go into details. There is first of all the question of property. I really do not see how, we of the Congress, who are pledged to the abolition of private property, yet think in terms of as to whom one share or the other should go. I see a curious phenomenon in this nation which I have not observed in other nations.

Shri Lakshmarayan Sahu (Orissa : General) : I want to know one thing.

Is the Congress pledged to abolition of private property ?

Mr. Deputy Speaker: That is the hon. Member's opinion.

Acharya J. B. Kripalani : I think if the Resolutions of the Congress are carefully read, it will be plain that the Congress does stand for the abolition of private property, that is, accumulated private property, not private property that is in use. But as the Deputy Speaker rightly said, this a question of opinion. I find that all people here are more concerned with redistribution of existing wealth. There is no effort in this land to create new wealth. Even our Socialist friends are not thinking in terms of creating wealth, but of redistributing the very little existing wealth that we have. I am indifferent where the little bit of existing wealth goes, whether it goes to the woman or to the man provided it remains in the nation. The nation should not be the poorer for it. You will be surprised to know, but I do not mind people taking bribes even, or going in the black market. After all, wealth does not go outside India. It is somewhere with the Indian people. I only think of the morality of it which is destroying our public life and our private morals. So far as wealth is concerned, it does not matter so much. After all these bribe-takers and these black-marketers are not taking away wealth to any foreign country. If it is not my brother-in-law, it is somebody else's brother-in-law. It is after all there. So I do not for a moment think in these narrow terms of where the existing wealth goes. I am thinking in terms of the nation. The whole attention in England and other free countries is directed to creating more wealth rather than dividing the already meagre wealth that exists there. Therefore, I whole heartedly support that a share in ancestral wealth be given to women. If they have their own share, they may be more careful about their money. It has been my experience that the expenditure of a woman is much more than that of a man. I have seen that when girls go to college and school, the mother is more careful about their clothes than about the boys' clothes. The young boys may toddle along to school walking all their way, but the young girls must go either in a tonga or in a bus even though the bus charges may come to Rs. 15 a month. So in clothes and in transport charges and in other things, woman's education costs more. This is when she is not married. When the women are married, you can look at their dress and at our dress. I have very often found at weddings that the boy looks like an idiot and the girl looks like a queen. I have seen it and anyone who has critically observed it will certify that it is so. On the road, I have also seen modern women and modern men going together. The modern man generally wears English dress and it is not on everybody that the English dress sits well. There are only a few exceptions. On most of us it looks very awkward. But the woman is in her native sari, full of colour, and even if she has not ornaments, she looks better and more

respectably dressed than the man beside her—nowadays he walks a little behind her and looks awkward. Those who are not acquainted with Indian middle class society today, or are foreigners, would think that perhaps some *chaprassi* is going behind. Therefore, I say, Sir, they have their own property, we will not be bothered by these things. They will spend it as they like and I am sure they will spend it more economically than when they have to purchase things and the bills come to us. Therefore, I am a great advocate that the women should have their property share also.

Then there is another point about which I am very particular. I am told that you cannot adopt a girl child. I happen to be in the unfortunate position that I have no children.

Shri B. L. Sondhi : What a pity !

Acharya J. B. Kripalani: It is a very great pity. I thought that as a Hindu I could adopt a child. But I have always had a preference for a female child, I adopted a couple of girls, but they ran away with their husbands. I yet want to adopt a girl. I do not know why this provision is there that you cannot adopt a girl. The girls, so far as the father is concerned are more lovable than boys and the more saucy and impudent the girl is the more the father loves her. Therefore, I request that if there be any defect in this Bill it may be corrected and female children may also be allowed to be adopted.

About divorce, Sir, I may tell you that I am not personally concerned, because my marriage was not criminal, but civil. It is open not to me, but certainly to my wife to divorce me any time she likes, if she feels that I am not behaving properly. But I find that so far as provisions for divorce are concerned this Bill is more retrograde than old custom. As we have been told by Shri Alladi Krishnaswami Ayyar and a woman speaker, there is a simple system of divorce among the masses in the villages. There are no costly proceedings, there is no scandal, there are no newspaper articles. All this is avoided. I would suggest, Sir, that a more reasonable, more scientific and more up-to-date attitude be adopted in the matter of divorce.

Sir, I have a suggestion to make, for what it is worth, for the consideration of the Law Minister and this suggestion would not involve expenditure, litigation, scandal or newspaper articles. All the marriages should be for five years and at the expiry of five years every marriage would be renewable. The renewal can take place by some declaration before any village officer or his parallel in a town or city. You can after five years go and say that you do not want to separate and the marriage continues. This will make divorce easy, scientific, without scandals, without litigation and I tell you it will be most up-to-date. I make this suggestion for whatever it is worth and I tell you it satisfies all the requirements of the new religion of progress and

advancement.

Shri L. Krishnaswami Bharathi: Sir, may I make a request to you. Sir, to allot one more day for the discussion of this Bill, in view of the fact that there are many hon. Members who wish to speak on it. The hon. the Prime Minister is here and he will be able to tell us whether Government would be prepared to allot tomorrow also for the discussion.

The Honourable Shri Jawaharlal Nehru (Prime Minister) : Sir, the House knows that nothing is more precious than every day and every hour of this House. We have a great deal of very important business to get through during this session and there are not many days left over. Nevertheless, as I made it clear in the early stages, we want to give the fullest opportunity for this debate to be carried on and for as many members as possible to speak upon it. Naturally, this or any other debate, cannot be carried on indefinitely to the detriment of other public business. So Government have stated that they want to give as much time as possible, subject to the debate terminating and ending. I am perfectly prepared, on behalf of Government, to allot another day, that is tomorrow, subject to two provisos : one that the debate terminates tomorrow; second that we sit on Saturday to conduct other business of the House.

Shri Mahavir Tyagi: Sir, may I suggest that it is very difficult for us to sit on Saturday. The Hon. the Prime Minister might just find time, because he has not to devote much time in the House. But we have to sit from morning till evening and in the evenings we have to attend meetings of Select Committees, besides attending to our other engagements. We have also to go through the various papers received by us, draft amendments and send them. Saturday and Sunday are the only two days when we can do that work. I would request you, Sir, not to take Saturday.

Pandit Govind Malaviya (U. P. : General) : I have to submit. Sir, that this measure is one in which the whole country seems to be more interested than it has been in any other measure. Members of this House should be allowed full opportunity of expressing themselves about it. So long as there is a single member of this House, no matter whether he is in favour of the motion or against it, who as a representative of the people, wishes to have a say on this Bill, we should allow time for it. If we cannot find time for it tomorrow, Government should give more days for the discussion of the Bill. I submit that it will not be fair to the people of this country or to the Members here, that anybody who desires to express his opinion about this measure should not be allowed to do so.

Mr. Deputy Speaker: The hon. the Prime Minister has already said that he will allot one more official day for the discussion of this Bill. There are a

number of other Bills which have been referred to Select Committees and others whose Select Committee reports have been presented to the House. Having regard to the business that is yet to be done, the hon. the Prime Minister evidently thinks that not more than one day can be allowed for the Hindu Code Bill. So far as that matter is concerned, it is an official day and I am completely in the hands of the Government. It is for the House to agree or to reject. I have nothing more to say in this matter. So far about twenty-seven Members have spoken and we have taken over seven days and nineteen plus five, twenty-four hours.

Dr. P. S. Deshmukh: How many are waiting to speak ?

Maulana Hasrat Mohani (U. P. : Muslim) : What is the guarantee that we will be able to finish the discussion even tomorrow ?

Mr. Deputy Speaker: I have about thirty-four names still who want to speak. The matter stands there and only tomorrow is allotted as an official day for the conduct of this business. It is for the House to consider it tomorrow. Now, as regards Saturday, it will be fixed as an official day because tomorrow is being taken up by this. You can arrange for the Select Committees to meet on some other day. The House will now adjourn till 10-45 A.M. tomorrow.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Wednesday, the 14th December, 1949.

HINDU CODE—*contd.*

Mr. Deputy Speaker : I have received a letter from Mr. Kripalani that it was under a mis-understanding yesterday that he sat down. I thought that he had concluded his speech. He says that as soon as I got up, in deference to the Chair, he sat down. If that is so, I would like to give him an opportunity to continue his speech, but I would request him to conclude his speech in a very short time.

Acharya **J. B. Kripalani** (U. P. : General): Sir, I thank you for the opportunity that you have given me to conclude my speech. I wanted to conclude it in a more serious manner. It appears to me that as a nation we lack a little humour and cannot penetrate to the serious purpose that lies behind the humour.

My support to the Bill is wholehearted and it rests upon very sound grounds. It rests on the foundation of the character and tradition of Indian womanhood. Throughout history they have played a very distinguished part in our life and in our culture. In ancient times we have famous names who contributed to the learning of the times. Many of them were great writers, philosophers and poets. In mediaeval times when we were down and out,

when wave after wave of foreign invasion came, our women confined themselves to the home with their ancient virtues undiminished. And when wounded and disappointed we went home they soothed our wounds and kept the home fires burning. They were a consolation to us. Not only that they kept our religion alive. They kept our traditions alive; they kept our culture alive. It is in Hindu homes with Hindu women that we find our culture and our religion at its best. Even today when gentlemen change their dresses, our women do not change theirs. It is this trait of Indian womanhood that was recognised by the Father of the Nation and that was so ably utilised by him.

In our struggle for independence they stood shoulder to shoulder with us. Very often I know, they had to suffer more than we had to suffer. Even when some of them did not bear lathi charges and did not go to jails, I know the privations that they had to suffer and they suffered them cheerfully. They have always helped us in every way and I suppose it ill-behoves us to think that they are thinking of themselves alone. After all the wearer knows where the shoe pinches. They know what handicaps they are suffering from. I am sorry that a Member from Bengal should be very enthusiastic against this Bill not knowing the conditions of the widows in Bengal. I have seen them with my own eyes.

Shri Suresh Chandra Majumdar (West Bengal : General) : Not all Bengal Members are.

Acharya J. B. Kripalani : I was talking only of one Member who is very enthusiastic against the Bill. As I was saying the wearer knows where the shoe pinches. I have no doubt that even when women get what they want, their traditional devotion to home, to their menfolk will not diminish and I have every reason to believe this. Sir, I am associated with women who may be considered as modern and you will excuse me if I give you a peep into my home life. You know and the House knows Mrs. Kripalani, but you know only her public activity.

Sjt. Rohini Kumar Chaudhari (Assam: General): On a point of order. Sir. Can you discuss about Mrs. Kripalani who is not present in the House ?

Acharya J. B. Kripalani : Of course, I would seriously object if the Member discussed her, but I thought I had a little right to discuss her. As I was saying, she takes her full part in public life, but as soon as she is at home she is as good a housewife as any ancient woman.

Though I do not like anybody to do physical work for me, I can tell you that when I am not looking, she does everything for me, including the brushing of my chappals and the washing of my clothes. I have also had the privilege of seeing other women who are considered modern. I am acquainted rather intimately with those Members whom you see only in the House, and I have

seen them in their home surroundings with their children, with their husbands, with their brother and I have no hesitation in saying that they lack none of the virtues of the old but they have added a new virtue to enrich their life, that of public activity and public work. Sir, I come from a community in Sind where most of the women are educated and according to modern ideas they may be considered even fashionable, but when I go to their homes I have marked the pathetic way they love their husbands, their children and their brothers.

An Honourable Member: Why pathetic ?

Acharya J. B. Kripalani : I advisedly use the word because you do not know that this love of theirs is a very inconvenient thing to us menfolk. However much we may try to dominate the home and make our will prevail, they go round us in such a manner, with such devoted service, with such faithfulness, with such steadfastness, with such patience that I have yet to see husbands in the world who are more henpecked than the Indian husbands. They always stoop to conquer. I have seen these modern ladies highly educated, as educated as ourselves, and I have found that, under their skin they are as ancient as any of their ancient sisters. I think those people who are married to old orthodox ladies and who have seen their devotion, if they were to see the devotion of the new, they will be surprised to see that there has been no change at all; and these women want that certain disabilities of theirs be taken away. It is said that, if women are given inheritance, love between brother and sister will diminish. I do not think that the love of our sisters is made of such flimsy stuff. It has centuries of tradition behind. I have seen sisters slaving away so that their brothers may be educated and find themselves on their feet. I have seen them sacrificing for the family. I come from a community where there is no joint family, where as soon as the son is married, he separates and lives alone, but I know because there is no joint family, there is greater love between the members of the family [*Hear hear*] and it was manifested recently when the Sindhis had to migrate from Sind and come to India. I have seen three or four families living together in one house. If anybody had a house outside, if anybody had settled outside Sind and he was living in India, that house was shared equally with nephews and cousins and in-laws and they bear the trouble of this terrible congestion very cheerfully. Many of them have to spend large sums of money. So this family love which has persisted for centuries is not going to end because there is a little change in the Hindu Law.

As Sir Alladi Krishnaswami Ayyar has told us, this law has always been changing. It is the pride of the Hindu religion that it has adjusted itself to changing circumstances. It is true to the old, yet it takes as much of the new as it is necessary for the healthy life of the community. Times have changed.

If foreign rule had not been here, our Shastras would have changed; our law would have changed. Foreign rule made these laws very rigid, and it is time that we bring in some new life and new light into them, and this Bill is trying to do that. I am sure the Bill would be put into some shape and form in Committee and that there will be no complaints. I am sure that our home life is not going to be disturbed and I am sure the love and the loyalty of our women is not going to diminish. That their devotion to their menfolk is not going to diminish in any way, and that the future women of India will be both true to their home and to the nation. Sir, I have done.

Shri Gokulbhai Daulatram Bhatt (Bombay States): (*English translation of the Hindi speech*) Sir, ever since the Hindu Code Bill has been before the House, it has agitated the minds of the people in India. Dr. Sen claims that the bill has already been before us for the last fifty or sixty years. But, in the books I have gone through in this connection, nowhere, I have been able to find a reference to any earlier existence of this Code. There was however, a Hindu Law, changes wherein have, no doubt, been engaging the attention of the Hindu society from time to time.

It was only after "1939 that we have come to know of this Hindu Code Bill in its present form. There may have been some talk on the occasion. Dr. Deshmukh had brought the Marriage Bill before this very House in 1938.

Dr. P. K. Sen (Bihar: General) : May I just explain ? I said that it had been before the legislative anvil for longer than 60 years, i.e. from 1856 or 1855, but that was with reference to the Marriage Law, not at all in respect to other aspects.

Shri Gokulbhai Daulatram Bhatt : I also say that only some of its aspects were before us and before the Hindu society. In fact such issues were not facing the Hindus only, the Parsis and the Muslims were similarly confronted by them. I mean only to give you some glimpses of the history of the manner in which this Hindu Code Bill has been brought before the House and the circumstances under which the Committee called the ' Rau Committee ' was set up. I want also to give you an idea as to the time-limit fixed for framing the rules and regulations concerning the social structure of the Hindu society populating over 30 crores as also the methods employed for publicity and elicitation of public opinion or for ascertaining any other reaction. Whether the Hindu Code Bill should be introduced or not, the Hindu society should be integrated or not, or whether or not there should be a synthesis of the various piecemeal legislation of the Hindu Law are not the real issues. I want to draw your attention to the fact that the Rau Committee was set up on January 20, 1944; they undertook the work and got a Draft Bill ready. The public came to know of this Bill on August 5, 1944 when they were

given two months thereafter to send in their opinions by October 5, 1944. Sir, I will like to point out also that only 1,000 copies of this Bill were printed by the Government of India for a population of 30 crores. Subsequently 3,000 more copies were printed under pressure of public demand.

Shri Mahavir Tyagi (U. P. : General): Were they printed in English or Hindi?

Shri Gokulbhai Daulatram Bhatt: All the 4,000 copies were printed in English. Thereafter Shri Rau had asked the Provincial Governments to get a translation of the Bill printed and distributed. Despite this translation, to my knowledge not more than 50 to 60 thousands of such copies were distributed in all in a population of 30 crores.

Now I would proceed to speak about the extent of publicity and circulation among people to ascertain their reaction to a Bill of this type which is of so much importance; which aims at integration of the Hindu society, which seeks to introduce a new way of life and which is considered to be a reformatory measure. A time-limit of two months was fixed for this purpose and thereafter the committee undertook a tour of the country. Their tour lasted for 38 days only. They did not visit all the cities and left out all towns and villages. Never did they care to go in the midst of people at any time during this tour nor approach any widow to enquire about the reason for her misery even though she may have continued to share property in accordance with the Dayabagh system of Bengal. They never went to Madras to know why our sisters and daughters were unhappy there in spite of the matriarchal system of sharing property. They did not find out whether widows were in distress in Bengal or Madras only or their fate was the same all over and, if so, what could be the possible reason for such distress. I can't agree to the plea that they are in a miserable state only because they possess no share in the property. This is not the case. Their miseries exist not solely because of having no property whatsoever. Formerly a hitch existed that the women widowed in a young age could not seek worldly enjoyments, there was hardly any justification in refusing an opportunity for second marriage to such widows. Ishwar Chandra Vidya Sagar and Malabari Saheb made efforts in this behalf and though I do not remember it clearly but I think it was in 1856 that a Widow Remarriage Act was passed and is in force till-date. I would however like to know the number of people who availed its benefits or the nature of happiness and prosperity towards which this Act has contributed. I mean to submit that the mere legislation cannot bring a change in the society or nothing material can result by thrusting something down the people's throats from above. I wish to cite the Parsi Marriage and Divorce Act as an instance. The Act was first enacted in 1865 and Sir Cowasji Jehangir had placed a Bill to amend the original Act

before this very House in 1936. I intend to go in history of that very amending Bill. Some friends of the Parsi society felt the necessity for amendment just as we are feeling at present. Kripalaniji is required to support the Bill so that his home may not be in danger. Likewise I have no desire to put mine in danger. Should I also support it for that matter?

Shri Krishna Chandra Sharma (U.P.: General) : In this respect all aged men behave alike.

Shri Gokulbhai Daulatram Bhatt: Quite right. I don't wish to reply Sharmaji just now. He may continue to follow his wife everywhere carrying her coat.

Shri Krishna Chandra Sharma: But she never puts on a coat.

Shri Gokulbhai Daulatram Bhatt : My intention in this submission is to explain the course of action adopted by the Parsi friends once they had thought to reform and amend their Bill of 1865. What did they do? They set up a Law Committee from among their Panchayat. And what did this Committee do. It did no such thing as to hammer out an amending Bill, fix two months as time-limit to elicit public opinion and arrive at the decision thereafter. They had with them a questionnaire for four years which among other things wanted to know the number of Parsis who on basis of 1921 Census might be one lakh in all or at the most one and a half lakhs. The report was before them for another four years and it was only after that they had accepted the proposal. The Report was circulated in the Parsi Society again and opinions were invited on the same. These opinions did not come from Bombay. Ahmedabad or Madras people alone. Rather Parsis living in Persia and China, may be only a few of their families may have been there were consulted first on that Report and their desire ascertained. The educated persons and the lawyers always present an issue in a distorted way and people somehow accept their version of a thing. Being gifted with a powerful faculty of argumentation, they are competent to impress other in the way of their liking . But the Report in question was circulated even among those who possessed no such faculty. Opinions were invited from groups irrespective of their being in a minority and a majority. Thus when everyone was consulted in 1936 the Bill was sent in an amended form. So the issue embodied in this Bill continued to engage their attention from 1923 to 1936 and the same was ultimately passed in an amended form.

I have much respect for Shri Rau. He has laboured very hard and has been of great help in the framing of the Constitution. But I will submit that he has mentioned this fact about consulting only a very few persons in the Report itself and thinks no harm in that. He however, did agree that the society was divided on the issue. Sister Renuka is not present here just now,

but I have to say no different thing about her as well. She was speaking on the Marriage Bill in 1943-44. On that occasion she had laid a claim that if a referendum were to be held and all votes to be counted then all the young men of high spirits (Joshila jawans) will be found to have supported that Bill. She had not used the phrase ' joshila jawans'. I am merely elucidating the original phrase viz. ' the youth ' used by her. I wish to submit it to my sister along with the other six or eight in this House that if they really think the Bill a very necessary one in the interests of women like our Acharya Kripalani who has come round to see in it the liberation of our women then, please, do not give it a title like the Hindu Code Bill. Name it the Post Independence Civil Rights of Hindu Women Bill or something like that. Thereafter you may proceed to give them as many rights as you please. After all we have always shown reverence and done honour to our women. Our ladies accept their husband's house as their own after marriage. Sister Sucheta has set up a house likewise. Once a woman goes to her husband's house, that house becomes her's also, she can claim her father's house as her own no more. It becomes merely her father's place from the time of her marriage. Her house is the one into which she is married. I need not go into further detail. But our sisters are wrong to think that it is a Bill of theirs only and for them only. Men have a right to it as much as the women do. I don't want to discriminate anyway between them on this score. So no man or woman should take it that the Bill concerns a particular section of the society exclusively. I shall be excused if I take rather a longer time.

So I was telling how sister Renuka had laid a claim for the support of all the enthusiastic young men in case of a referendum. In the Report submitted by Shri Rau in 1947, he said, ' Opinion is sharply divided some to the left, some to the right. Also that those in favour of the Bill were persons of brain and quality whereas the others opposing it were mere idiots, devoid of any brain, possessing no status in life and without any sense to understand the society and its complexities.' May I know who then are those who understand the society and its problems? Does Shri Rau understand it? And does the Dwarka Nath Mitter really not understand it? I have nothing to say about those people. But there is no one who could lay a claim to more work in this field than Malaviyaji, whose birth anniversary we have celebrated only yesterday and acknowledged him as an unequalled cultured man. He, though an orthodox, was always in the fore-front in the matters of reformation of the society and rights of the people. But that very venerable Malaviyaji had not thought it to be a proper way in which the Hindu Code Bill was being ushered in. We may not heed him. You all know Sir Tej Bahadur Sapru quite well. He too was second to none in wisdom or intellect. He had declared himself to be

in favour of the Bill, but had agreed that it was not a suitable time to frame a Bill of this type. I go further. Sir Chiman Lall Setalwad enjoyed a status in life not less than any other man and had always taken a leading part towards reformation of the society. He never agreed to codification on principle but expressed himself in favour of giving a share to the widows and daughters without any codification. Surely it is not right to consider all persons to be wise who talk in the same vein as you do and denounced all others as mere fools who cannot share your opinions. I will request my brothers and sisters through this House and Sir, through you, not to consider the Bill in this manner. And, to my Hon. Leader, the Prime Minister, Pandit Jawahar Lal Nehru, who is not present in the House. I would like to say that I should certainly have joined with him—and I am in fact with him—in his efforts to evolve a uniform set of rules for the Hindu society and his desire to assemble the scattered provisions of Law and to form them into a system—a code—but I ask, have the public been, allowed an opportunity of expressing their views. Take the case of the small sized Parsi Community. They kept all their component parts with them, ascertained the opinion of each one of them separately and it was then only that the Bill was brought forward. Then only did they succeed for otherwise they could not have achieved their purpose. A bill to amend the Civil Marriage Act was brought forward in 1921 with the same object as now. Why are you going to frame a Hindu code, why not frame an Indian code ? All the people live in the same country—India; they ought to have similar ways and customs. When we have decided on one common language there should also be one common code for all the people of India so that this might lead to unity and result in a united India. I want to tell you about that period. The Christians and the Muslims raised such an opposition that Dr. Gaur had to say : It aroused convulsive opposition from the Mohammedan and Parsi communities throughout India. I had no other go but to drop the Bill and bring a new bill in 1923.'

And he had taken that course. The Hindu society is not treated with any regard. No consideration is shown to a community which comprises such vast numbers. No consideration is shown to the counsel of Malaviyaji, leave alone Pattabhi sahib. Sir Alladi and Lakshmi Kanta Maitra. What they say is of no importance. Let alone others, here is the case of Rajendra Babu who is known as Ajatshatru. He is a living treasure-house of wisdom and intelligence and is the ornament of this country. Who has put the ideas of Gandhiji into practice and who could explain them not only to this country but also to the rest of the world. He says, ' This is not the opportune time'. There are many things in it which are controversial. Please sift them out and do not touch upon them. But, what to do? Our leaders say, ' No, this has to be expedited.'

Then, let them expedite it but they should at least see to it that the views and assent of all the people are obtained. There is one advantage in particular seized by Dr. Ambedkar., I will tell you what that advantage was. When this Bill was introduced in 1948 we all sat together and decided that nobody should make a speech on it for the present. Neither Dr. Ambedkar nor anyone else said anything in particular. At that time it was thought that if the Bill was just introduced this was likely to cause satisfaction to our sisters and to others who are reformists, who want unification and codification and to those who are rational. So it was agreed to let them have that satisfaction. Taking advantage of this, however. Dr. Ambedkar thought that it had been conceded by the people generally that the Bill was all right. No. sir, we did not study some of its clauses some of its provisions. But, since our leaders said, 'Let it move forward a bit ', we said ' Very well, take it forward. Bring it in the Bazaar '. Thus it has come into the Bazaar, it has been paraded in procession and here we are seeing it. I should like to say that if all the debate of ours had taken place before the Bill was sent to the Select Committee, it would have done a lot of good to Dr. Ambedkar and our friends of the Select Committee. They would have come to know what shape should be given to the various things. Now, we are faced with a sort of conundrum. Our confusion lies in this that if we say that it should again be sent to the Select Committee, it is not known to what a labyrinth of rules and procedure we might be landing ourselves. If, on the other hand, we say that we should hold it up for the present there is another sword hanging over our heads. Now, what are we to do? We are in a pretty fix and it is for our leaders and Providence to take us out of it.

I was saying that we were not called for to introduce this measure at this particular juncture because we have not yet obtained the views of the Hindu society. Whatever Hindu society has been consulted belongs to the towns. And how many people were consulted ? There are 121 individuals and 102 institutions who have filed written statements or given evidence. Now, shall we say this is the opinion of the Hindu society ? In case you want to know the opinion expressed by Mr. Mitter, and that too in regard to each part separately I am prepared to speak to you about it. Opposition has been offered to it every where barring Madras. Those belonging to the Dayabhaga School opposed it in Bengal. There is opposition from the Bombay side. Because of this antagonism and other causes it has come to face opposition. If, in spite of this opposition we were to say, ' No,' what the minority say is along the truth and you will have to accept it. it is rather hard. The Hindu society should be unified. This should certainly be done on the basis of a system. How can I say the women, our sisters, should be given no share? But let our sisters

themselves be asked to say if, after they have received their share, they would still have any love left for their parental home. How much love would be still left? Just ask one of the reformed women of today where her father lives, where her brother lives. They keep to their own cottage, homestead or mansion and do not so much as greet a relative. Such are the reformed people of today. Hence if it comes to shares what will become of us? However what I wanted to say was that in spite of all these objections we are faced with the minority issue. Even though the view of everyone have not been obtained we are being treated to that kind of pressure. We are urged to accept it under duress. They fail to see, however, what complications are bound to arise later on.

Hence, I want to say. kindly find out a middle course. Only a middle course would give satisfaction to us and to society and cause the unrest to subside. Just as Pataskarji observed to day we are already up against a number of difficulties. Why create another big one at this juncture? Why plant another thorny bush and thereby spoil the path rendering extra labour necessary later on for its clearance? Why should you act in that manner? Kindly attend to some other task and let this one be postponed for a year or two. I should like to suggest to my sister— veritable goddesses as they are— to those of them who have welcomed this measure that in the interests of the country, they should take upon themselves to go to our Jawaharlalji and appeal to him that this means my be held up for one or two years. This would help in many ways. But as it is, their line of thought is that if this Bill is not passed now or at any rate in 1950, it may never be passed, because those who come hereafter would not allow it to be passed. But let me tell you that even if you pass it to day you should know what is going to happen later on. Such a type of people will come in to fill these seats who will say, ' As our very first duty let us set right this Hindu code that has been enacted'. Hence. I beg you kindly to prevent this if you can. If however, you cannot do that then, my advice is : 'Not to the left, not to the right, come in the middle; find out the golden mean. This alone can satisfy the community.

Secondly, I wish to refer to what Dr. Ambedkar said in reply to a point of order raised by Mr. Sarwate to which, Mr. Deputy-Speaker, you also added your support, viz., that this Bill is going to be applicable to the provinces only and that if it is sought to be made applicable to the States it will be sent to them, it will be circulated, before it is decided what is to be done about it. Dr. Ambedkar made the following observation :

" When the occasion comes for the extension of the bill to the Indian states, no doubt this Legislature, when a proper motion is placed before it, or the Government of the day will take note of their wishes and intentions and

the States which have come into the Indian Union will be consulted. " If this is the position then what is passed today will be sent to the States after six months and by the time the states enforce it you will have gone still further ahead. The States' people who are already somewhat backward, will be left even further behind. You should therefore, kindly keep that point in view and see what can be done about it.

I may be permitted to say that the mode of obtaining public opinion was not perfect. I have already said that. It took us two and a half to three years to frame our Constitution and even though we have proceeded with the utmost caution, there are so many people who say it is no good. We consulted the Provincial Governments, supplied them copies of the Draft constitution and it was discussed there in their legislative assemblies and cabinets before they sent us their views. As you know, the Rau Committee never sent their draft report to any provincial Government. This is how it has come up. Hence, I wish to point out that the opinion was not taken fully and properly. The basis of your claim is also not sound. I am in no doubt on that score. Renuka Bahan remarked, ' Half of the country will be with it, but the report of the Rau Committee says, ' The society is very much divided.' In view of this whom should I rely upon? Should I rely upon those who gave their report in 1947 after investigation or upon Renuka Bahan's statement of 1944?

Mr. Deputy Speaker : Several other Members have yet to speak. Kindly conclude it.

Shri Gokulbhai Daulatram Bhatt: I shall be closing in five or seven minutes. I should say a few things more if you permit.

Mr. Deputy Speaker : Just as you please. You have taken thirty minutes already.

Shri Gokulbhai Daulatram Bhatt : I shall speak just a little more and then close very soon. I must say that it is the Hindu Community alone which would quietly take whatever blows you might give it. Look at the Muslim community. Did anyone have the courage to draw up a code for them? Why not unite the *Shia* and *Sunni* schools of thought? Could you just dare meddle with the law of the Christians ? Or could you dare tackle the Parsis? This poor community alone must stand every thing. Is it because you think it is dead? Dr. Ambedkar say he belongs to the *Shudra* caste. I hold him very high. Someone gives him the title of Muni (saint), another raises him to the rank of Rishi (sage) whereas he himself says he is a Shudra. Then let him be Vishwamitra. Whatever you are, but, of course, you are a wise man. Why nurse that inferiority complex? He says, ' *Smritis* ' continued to be prepared. The Brahmans went on writing. What else had they to do after all? What is the work being done by your department?

That was exactly what the writers of Smritis did. It was a department which amended laws and rules from time to time. Just as you prepare and put up amendments to laws they did likewise. I however do not wish to go into this question. Nor do I wish to go into other extraneous matters. Our sisters say this thing has come to be included in the fundamental right and that those who are opposing it have not been able to comprehend the fundamental rights. " You do not understand the fundamental rights, " they say. Does it form the fundamental right or even state law? Does the Hindu Code constitute State law or is it personal and private law? If you were to bring forward a bill in regard to an Indian Code, I could say with authority nobody would oppose it, but today you are out to frame a Hindu Code and to make a change in the Hindu Law. But personal law is not State law and therefore it does not apply. Gaur had remarked, ' it will only be *Avtar* who might come someday and bring forth this Code.' Shri Gaur is perhaps sitting in Nagpur now and he must have been gratified to learn that the *Avtar* has manifested himself at last and that the Hindu Code Bill has arrived.

Shri Mahavir Tyagi: Disgraced persons.

Shri Gokulbhai Daulatram Bhatt: Saying a few words more I wish to conclude my speech in a short time. It is said that brothers and sisters should be equally treated. Shri Kripalani has left, why would he hear what the others say? So I wish to say why this double right should be given to the sisters. She will take her *stridhan* from her father's place, will take all the dowry given to her by her father, will take her personal share and apart from this all her share in the husband's property is still there. Then how the sisters have become so selfish? The women are themselves prosperity incarnate, why do they want more of this worldly wealth? Shrimati Kamala Chaudhri has given out that without doubt wealth and prosperity will automatically flow back to the wealthy and prosperous. Women are themselves wealth and prosperity incarnate, why do they want to add to their prosperity ? With the slight illusion and fascination they still possess they have been able to capture and subdue the whole world, if the illusion and fascination would increase then nobody can foretell what would not come to happen. If the wealth (*maya*) will undoubtedly flow back to the wealthy then subsist Nature and Nature only in this world and exclude Man therefrom. If by this exclusion of Man the *may a* is able to subsist, then *do* accordingly.

Our friends from Travancore and Cochin are far advanced but they should also keep in mind that a solitary swallow will not make summer. They should make the villagers also pace with them and if they also are to be taken along then kindly give this Bill more publicity and explain it to them the various implications and then the purpose will surely be achieved. There is not the

least doubt about this fact. At places it is being said that by passing this Bill a reversed state of affairs is being created, and to some extent this allegation is right also. Let the water trickle down its natural course and if by spurring the minority view point here you would reverse the state of affairs then today you may be able to do so; but in future a time will come when such drastic changes would be made therein that would stun you speechless. The inevitable must come to pass. I do not like to go in details.

I wish to say one thing more that our *Smritikar* (law giver) *Yagyavalkya* has gone a step ahead of *Manusmriti*. Even I do not want to enter into the controversy as to which of the *Manus* has been the author of this *Manusmriti* because there have been a number of *Manus*. But Shri Vigyaneshwar, the famous annotator of *Yagyavalkya Smriti*, who has written the *Mitakashra* annotation and the annotators who have written *Dayabhag* and *Mayukh* annotations have propounded different and distinct opinions. I do not want to quote all the illustrations. But they have laid down that if a woman be not given her *stridhan* then she also should get a share in the property equal to that of the son. This has expressly been mentioned. I wish to say with all the emphasis at my command that in our *Smritis* a mention is made of *stridhan*. The people of England have not yet codified their law. I wish to inform you that according to the English Book of Prayers the prohibited degrees of relationship for marriage were determined in 1565 A. D. The same continued to be in force till 1915 A. D. and in 1915 A. D. only one alteration was made in the prohibited degrees of relationship viz., till now a marriage could not be consummated with the wife's sister. So I wish to say that we have stepped far ahead as compared to this. There they took so many years to change one degree of prohibited relationship but here according to the Civil Marriage Act the people have been permitted to enter into matrimonial alliance with the second cousins also. Those who like many take recourse of Civil Marriage, but why you want to impose the same restriction on all others. The Civil marriage Act provides for marriages with second cousins. Those who wish to adopt the system may follow it. While framing this Bill we should keep in mind the Principle of Eugenics also. It is wrong to consider that our *Smritikars* (annotators) have mentioned nothing at random. Our *Smritikars* were past-masters of the Science of Eugenics. They were not common people. They were highly learned and well informed persons. Whatever doctrines they laid down were perfect in all respects and were propounded after mature consideration. Their decrees were so perfect that it was not at all deemed essential to effect any changes in them say after 6, 8, 10 or 12 months. Our *Smritikars* were very wise and intelligent. Deep meditation of hundreds of years is essential to suggest any changes in what they have written.

Undoubtedly you may make suitable amendments there in, because from time to time suitable amendments have been made in these *Smrities*. But we must consider this fully well whether by introducing these changes the society will be benefited or put to loss.

Shri H. V. Kamath (C. P. and Berar : General): Are the Hon. Members of this House not intelligent?

Mr. Deputy Speaker: Please go on.

Shri Gokulbhai Daulatram Bhatt: I am not so intelligent and learned as Shri Kamath is. I do not allege that the Hon. Members here do not possess intelligence. Everybody has got his own intelligence. Everybody can think. But I say that I will not accept lying down all that Dr. Ambedkar says in a manner that great men have great views. Similarly if any Pandit (scholar) were to come and say that whatever has been done for the untouchables is not at all justified, then also I will not take his word for granted because I do not believe in the maxim that great men have great views. But I was submitting that whatever our Smritikars have done, have done after fully taking into consideration the future of the society. It is quite true that these Smrities were codified according to the then needs of the society. Today our society consists of numerous castes and subcastes, the people belong to different sects, they believe in various doctrines, there are Sikhs, Jains, Buddhists and followers of other schools of thought and so on. They are divided up into numerous religious sects. It is not an easy task to inter-blend them in a single system.

Sir, I will now take only a little more time. I had just stated that the honourable Dr. Ambedkar said, " Custom will eat into the code and therefore custom should not prevail " On the other hand he says that the law governing the succession rights of Rulers and jagirdars, which should not be there, should continue; and when there is a question of usages and customary rights, he says that this should not be there.

There is the point of succession. Another point is that of adoption where he says that customs and usages should not be allowed to continue. Both these things are untenable. You had better put an end to it, make it uniform or abolish it outright. Sir, I would again bring it to your notice that petty conferences are being held at other places on account of which I am feeling some difficulty in speaking.

An Honourable Member: He is repeating the same arguments.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : It is now one hour since the gentleman has been speaking.

Mr. Deputy Speaker : Order, order, The best way of asking him not to speak longer is not to make noise but to leave him alone so that I may ask

him to complete his speech early. The Hon. Member knows that many other Members are anxious to speak. He has already taken more than 45 minutes.

Shri Gokulbhai Daulatram Bhatt: Shri I am indebted to you. So I was telling you that on the one hand you say that the custom is no problem, these customs and usages should continue; on the other, if this is acted upon it would tantamount to kill the Hindu Code. I do not want both these things. You ask as to grow more food. If we have to grow foodgrains in all the land in our possession, be it a garden or beautiful lawns, we must cultivate all these lands. On the one land; you want that your lawns should also remain intact, and on the other, you desire that more foodgrains should be grown. Such a course does not appeal to me.

You know what is custom ? We should understand family customs. village easterns and national customs—'*Shastrad run balysi*' (Custom overrides the sacred laws). What is the meaning of *Shashtra*? By referring to shastras again and again you people would be thinking that I am raving like a maniac. The *Shashtra* is a science, a treatise and a law. That is a Smriti. After this you will not like to appreciate any such thing. So he will not like to involve himself in any such controversy which the divorce problem has created. A man and a woman sit in a *Panchayat* and say that they want to get rid of one another. They say that they have enjoyed the pleasures of the world and want to go to some other place. They will not involve themselves in such a botheration of having a recourse to the District Court or High Court for this purpose. If they behave in such a manner the reverse will be the case.

When I go to the village, I will tell the people that the Hindu Code Bill has been framed in such a manner and it contains a provision of such like matters. Those people will then say that they do not want this in such a form. The existing village Panchayats are quite good and these should be allowed to carry on as they are doing at present and they do not want to involve themselves in such complications of law which will enable the lawyers to thrive and the poor to become poorer. With your blessings, all these things abundantly exist in the Hindu law.

Sir I was just saying what is likely to be the net result of all such things. I cannot touch here every aspect because I have not got sufficient time at my disposal that I should refer to all such things, as many of my brethren are desirous of speaking on it.

So Sir, I was just going to say that this is a question of vital importance. I would advise my honourable friends sitting here who have expressed their opinion in favour of its being passed to consider it once again more carefully. This is not the time for hasty action. You are liable to be called to account by the people for your doing of it. With all due respects, I would also like to

request our esteemed leader the honourable Pandit Jawaharlal Nehru that this question which has been brought up before us is so vital and of such a fundamental importance that we should necessarily consider over it most carefully. All the more necessary that the public opinion should be elicited in this matter. My honourable sister Shrimati Renuka Ray had referred to a referendum. In this connection I would like to say that as the elections are likely to be held in the near future, you can at that time elicit the opinion of the masses whether or not they want the Hindu Code. You can place it before the public that we are framing a Hindu Code Bill of this nature and whether or not they like it. If you are able to enlist the opinion of the people on this issue, then you are at full liberty to pass it in this House. This should be agreed upon as the basis of referendum. I am not a man to be swayed over by the newspaper reports. The newspapers are given to the publication of exaggerated versions of such matters simply to promote their circulation. I have got no personal grudge against the newspaper men. I cherish solicitude for them and have every sympathy with them. But so far as the question of holding a referendum is concerned,

I would like to tell my honourable sister Shrimati Renuka Ray, who is not present here at the moment and other sisters that as elections are likely to be held after a few months, this question can then be placed by them before the public. You can tell the people that we have framed such a Hindu Code Bill and want to pass it. If the people vote in your favour on this issue, then we can surely pass it here.

Thus, I would like to request the Government to consider over this matter and not to pass it at this moment. To conclude, I would say this much, " Not to the left, not to the right, come in the middle to find out the golden mean."

Shri R. K. Sidhva (C. P. and Berar: General): Sir, My friend has mentioned the Parsi Matrimonial Act. Will you kindly give me five minutes to explain?

Mr. Deputy Speaker : I am not going to allow it because he did not criticise it in any manner. He said the Parsi Marriage Bill was sent round to all persons all over the world. He used that as an argument in the case of this Bill which involves three hundred millions people. Therefore on that ground the Hon. Member cannot claim a right to speak.

Shri R. K. Sidhva: No. Sir, He has made incorrect statements.

Mr. Deputy Speaker : Then the Hon. Member must have brought it to my notice. We cannot start an argument over every matter.

Shri R. K. Sidhva: Have I no right to speak on this Bill ?

Mr. Deputy Speaker : Every Member has a right to speak, I have absolutely no doubt about it. Only time does not seem to permit.

Dr. Bakhshi Tek Chand (East Punjab : General) : Sir, the debate on the Bill has gone on for several days. Both sides of the question have been put before you. I do not want to repeat the arguments, which have been given on the one side or the other. I have only two submissions to make, one to the supporters of the Bill and one to opponents of the Bill and after that I have to place one suggestion for consideration of the House for such changes as I think should be made in the Bill to make it acceptable to all or at any rate to a large part of the House and also of the country. I will ask the indulgence of the House therefore for a few minutes to permit me to place my views before it.

The first suggestion that I have to make to the opponents of the Bill is this. They say that this House is not competent to touch the provisions of Hindu law, because it is a matter of a time honoured religion which has come to us through centuries and that it is only a *Pandit Parishad* which will be competent to effect any change. I submit with great humility that is a position which cannot be accepted for a single minute. Hindu law, as has been pointed out by Sir Alladi Krishanaswami Ayyar and others, has never been static. It has changed from time to time. Each time when the structure of society changed a *smritikar* appeared—a sage, a rishi, a muni—and he made such modifications as were suited to the times. This process went on for centuries until the country came under British rule. During this period, the only changes that could be made in the law were either by judges who were to interpret the law or by the legislature. No new sage could appear with the authority of a Manu or a Yagnavalkya or a Viswamitra. Either the judges who were duty bound to interpret the law as they found it in the *smritis* or *nibandhas* could interpret it or the legislature had to intervene. It is idle therefore to contend in the year 1949 that the legislature is not competent because it consists of all types of people who are not learned in the *smritis*. That is a argument which I submit, should be rejected forthwith. If you see the course of events that the legislatures of this country have followed for more than a century, you will find that whenever it was found that the Hindu law or any branch of it was found to be defective, legislation was introduced. It began with the Removal of Sati Act in 1829 under the guidance of late Ram Mohan Roy. The custom of *sati* which was considered to be a part of Hindu religion, but which was not really a part of it and which was an abuse, if I may say so, of the principles of religion, had to be done away with and for that purpose legislation was introduced as far back as 1829.

Mr. Deputy Speaker: There is too much of whispering going on. The reporters are unable to take notes. I am also not able to hear.

Sjt. Rohini Kumar Chaudhari : The Speaker's voice is indistinct. He has got two mikes close to each other. We do not hear him properly either.

Mr. Deputy Speaker : He is speaking before the phone. Each seat has been converted into a small phone. What am I to do?

The Honourable Member will kindly resume after Lunch. The House is adjourned till 2.30 p. m.

Shri A. Thanu Pillai (United State of Travancore and Cochin) : May I make a suggestion ? (Interruption). My point is this.

Some Honourable Members: The House has already been adjourned.

Mr. Deputy Speaker : You are late. The House has already been adjourned

Shri A. Thanu Pillai: I am sorry. I did not know.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after lunch at Half Past Two of the Clock, Mr. Deputy-Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

Dr. Bakhshi Tek Chand: Sir, when the House rose, I was referring to the Acts passed in 1829 under the inspiration of Shri Ram Mohan Roy for the abolition of *sati*. Now as we all know, it was argued at that time that *sati* was a part of Hindu religion. It was said that *sati* was one of the essential features of our *dharma* and any interference with it would be an attack on Hindu religion. But the sense of the community prevailed, the law was passed and *sati* ceased to exist. This custom, as I was saying, was not a part of Hindu law. It was an innovation which has been introduced during the, what are called dark ages, or the medieval ages. Luckily that was removed by legislative enactment.

After that we had the 1850 Act for the removal of class disabilities so far as inheritance was concerned. If a person or the heir changed his religion the right of succession was not affected. That was the second great change that was made in Hindu law. Then came another very great reform in 1856 when the Widow Re-marriage Act was passed. For centuries it was believed that the Hindu religion did not permit the re-marriage of widows.

Shri Mahavir Tyagi : May I know. Sir, if the Treasury Benches are represented.

The Honourable Shri K. C. Neogy (Minister of Commerce): Government is one and indivisible and so long as there is one Minister present I think he is competent to represent the whole Government.

Mr. Deputy Speaker : I think it is always a healthy ambition for Members on the other side to come and sit over this side.

Dr. Bakhshi Tek Chand : As I was saying, widow remarriage was considered to be an essential feature of Hindu religion and any suggestion to repeal that law or to enact a permissible legislation which would enable a

widow to remarry was opposed tooth and nail. But under the leadership of Shri Ishwar Chandra Vidya Sagar and other leaders of that day public opinion asserted itself and this great disability under which Hindu women suffered was removed by another piece of legislation. Well, the Hindu religion did not come to an end by the enactment of that legislation.

After that there have been numerous other Acts by which Hindu law has been modified by the Parliament or the Legislative Assembly of the day. Most of you will remember the great agitation which took place in 1890 and 1891 when the age of Consent Bill was introduced. At that time the cry was raised that it would be a gross interference with the Hindu religion if a legislature consisting of Hindus, Muslims, Christians and dominated by bureaucrats were to legislate in regard to a custom which permitted intercourse with a child wife below the age of twelve. If you have a recollection of what appeared in the papers, even advance papers like the *Amrit Bazar Patrika*, you will see in what kind of convulsion the Hindu society was at that time. But again the legislators persisted and that Bill was passed a Bill which ultimately has culminated in the last session by almost unanimous vote of the House in the further amending Bill which our friend Pandit Thakur Das Bhargava introduced and which if I remember aright was unanimously passed by all sides of the House. At that time none of our friends thought that this Assembly was not competent to legislate with regard to a matter which was considered to be an essential part of the Hindu religion. Coming to more recent times, you will find that in 1916 the Indian Legislature passed what is called the Dispensation of Property Act, an Act which has had the effect of repealing the law which has been laid down by Privy Council in what is known as *Tagore versus Tagor* case. In that case, following certain texts of the *Smritis* the Privy Council had ruled that behests or gifts in favour of a class of persons who are unborn on the date of the gift were void according to Hindu Law. That had continued to be the law for about sixty or seventy years. It had been suggested that that was a wrong interpretation of the texts. The matter was examined and it was found that certain texts according to their literal meaning could only lead to the conclusion at which the Privy Council had arrived. This was found to be a great handicap and a great injustice. Therefore the legislature again intervened and by a unanimous vote of the House, it passed that Bill in 1916.

After that came what is called the Removal of Disabilities Bill. Under certain texts of Hindu Law as enunciated by some of the *Smritis* if a person was suffering from a physical disability, if he was blind, if he was deaf and dumb he was not entitled to inheritance. Many people thought that whatever the meaning of the texts might be, this was a great hardship. If out of five

sons, one was deaf or was blind or suffered from some other disability, it was more necessary in his case that he should get a share in the father's patrimony rather than the persons who are physically fit and capable of earning. Well, that text might have been of some validity or of some utility at a time when in ancient times the structure of society was such that in order to increase the family wealth it was necessary that all should work. It had become obsolete and the Hindu community revolted against it and the agitation was such that the Indian Legislature passed this Act in 1928 after which persons suffering from physical defects were allowed to inherit in the same way as persons who were physically sound. This was another inroad into Hindu Law.

Then came another and very important Act, Act II of 1929 by which certain classes of people, who till that time had been ruled by the courts as not entitled to succeed to property, were allowed to succeed. According to the text of the *Mitakshara* school, it had been ruled by the courts in India and ultimately by the Privy Council that there were only five classes of females who were entitled to succeed, because these five were mentioned in *Mitakshara*. The Bombay school was of opinion that this list was not exhaustive but it was only illustrative and the great commentator Nil Kantha and his followers held this practice was due to a wrong interpretation of the *Mitakshara* in Northern India. Well, a Bill was introduced in this Assembly and after a great deal of deliberation that Bill was passed and the daughter, the sister and the sister's son and so on were all included in the list of heirs. That again was a great change in the structure of Hindu Law particularly in Northern India.

You are all aware of the Sarada Act. I will not repeat that. At that time also it was argued and argued seriously in this House also that fixing a minimum limit for marriage was an interference with Hindu religion. Well, the opposition did not succeed and the legislature persisted and the Bill was ultimately passed.

After that, we have had what is known as the Deshmukh Bill. That Bill of 1937 had a great effect: it effected a very great change in Hindu Law of succession. In areas governed by *Mitakshara* school, when there was a joint Hindu family after the death of one co-sharer, if he left no son the widow was not entitled to any share. She was dependent upon the brothers-in-law or the husband's father and the other coparcener, dependent entirely upon their mercy for their maintenance. She was to receive only food and clothing and nothing else; mere maintenance only. Under that law it was enacted that childless widows would be entitled to the same share of the property as her husband would be entitled to and if she so liked, she could even ask for the

property to be partitioned. It was held at the time that Hindu women in a joint family being entitled to sue for partition was considered to be repugnant to the fundamental principles of the Hindu Law, but the Legislature again made this change, a change which was warranted by the changing times, by the rising consciousness not only among women but among the men in this country, among Hindus who wanted that this should be done to their sisters and mothers, Now, at that time also there was a great deal of stir in the country but ultimately that stir also died down. Twelve years have passed and we cannot say that Hindu society in any way has crumbled to pieces or that Hindu religion has been attacked in a very vital matter so that it is now going to pieces.

I come now to more recent times. In 1946, shortly before the present Assembly came into existence, a Bill permitted marriages among sagotras was passed by this Legislature. That Bill did not interfere with the prohibited degrees. Even though persons were living in different parts of the country and did not belong to the same caste, yet because they belonged to the same Gotra according to some technical meaning of the texts, the marriages could be invalidated, Such marriages, even though performed in several parts of the country, their validity was in doubt. That was again an enabling measure which was passed in 1946 and to which no serious objection has been taken.

Now, I would ask Hon. Members to bear in mind what we did in the last April session of this Assembly. My esteemed friend. Pandit Thakur Das Bhargava brought a very simple Bill consisting of one section only, but a Bill which was of a most far-reaching and important character. By that Bill it was enacted that notwithstanding any text of Hindu law or any custom or usage having the force of law to the contrary, a marriage between various castes of Hindus would be deemed to have been validly made. That was a very great step, a step which permitted inter-caste marriages and which removed such restrictions as one must marry either in his own sub-caste or, at any rate in his caste. That was the measure which was passed by this House unanimously, and so far as I remember at the consideration stage the only voice raised against it was that of Dr. Ambedkar. All other Members orthodox and un-orthodox, person governed by *Dayabhaga*, *Mitakshara*, by the *Mayukha*, person governed by tribal customs and everybody supported the Bill. Dr. Ambedkar : of course accepted it on a very narrow ground. He was entirely in favour of the principle of the Bill but he thought that as this Hindu Code which was a very embracing measure was before the Assembly and therefore we should have a comprehensive measure that was a very technical type of objection. Otherwise we all unanimously supported that Bill and it came sometime late at the end of April. Now I will ask my orthodox,

friends who say that Hindu *Dharma* is in danger as to what has become of that. We were saying when the Constitution was under consideration that we want to have a class-less and a caste-less society. That is contrary to certain texts of Hindu law which have been in force in various parts of the country for centuries, but still the Bill was enacted and it is a part of the law of the land. At that time, if I may be permitted to say so, nobody took an objection that this House was not competent to deal with it because it had been elected only for the purpose of framing the Constitution or for the purpose of carrying on the day to day administration. Abolition of caste system in the matter of marriages was surely not part of the day to day administration of the country. It was a very vital and a very material and a very substantial change in Hindu law of marriage, the law which prevails in some form or another in all the Schools from Kashmir to Kanya Kumari and from Bengal to Gujarat but we all did it with open eyes when the Bill was passed and Mr. Munshi who was here at that time said that the Bill was a far-reaching one, though the Bill is a very short one; it is a very big change and a very important change. The whole House cheered him at that, I will ask my orthodox friends, the opponents of the Bill where was their regard and their enthusiasm for Hindu Law or Hindu *Dharma* at that time? I submit, therefore with great deference to my orthodox friends that this cry which is being raised, that this Bill which is now before the House is all attack upon the Hindu religion that the foundations of the Hindu religion will be undermined, that the whole fabric of Hindu society and Hindu culture will crumble to pieces or that this House is not competent to enact a measure of this kind simply because it does not have many learned pandits or that the Members who are here were not elected for a specific purpose. I submit with the due deference that there is no force in this objection and I would most respectfully ask my orthodox friends to consider the history of the legislation which I had placed before them the various measures which we ourselves have passed in recent times and to consider that they might attack the Bill upon other grounds, but to say that this House is not competent either being merely a legislative assembly or that we have got no mandate of the country to look into this measure to enact or consider it and pass it, I submit with very great deference that that argument is not sound. I will ask them to examine the Bill upon its merits to accept it or to throw it out. It is one thing to say that the Bill has not been sufficiently considered; it is one thing to say that there are provisions in the Bill which require further discussion and examination; it is one thing to say that the bill requires to be re-cast in certain matters. Even today as I suggested and as Sir B. N. Rau in his original report of the Committee said perhaps it will be advisable to take this reform of Hindu law in parts. I can quite understand that, but when every morning —1 hope I

will be pardoned for saying so— every mail has been bringing in letters during these months, letters and reprints from speeches delivered by persons, resolutions passed by the *Dharma Sangh* and this society and that society, all giving the opinion of this great man and that great man and saying that this Assembly is not competent to deal with them : I with the greatest deference and in all humility submit that that is neither correct nor logical nor reasonable, and therefore, I would submit to my friends, the opponents of the Bill not to press those arguments but to look at the Bill very reasonably, rationally and with a proper point of view.

That was my submission to my orthodox friends and now I may be permitted to say a word to our friends, the supporters of the Bill.

Shri H. V. Kamath: Are they heterodox or orthodox?

Dr. Bakhshi Tek Chand : Well let everybody decide it for himself. Now the position is that this Bill was introduced. It had as we know a very brief discussion at the first stage. When we met in the Select Committee we were given only six days to consider this important Bill and when certain objections were raised by Members of the Committee to some parts of the Bill, we were told that the principle of this proposal goes against the fundamental principles of the Bill which have been accepted by the House when it passed the first reading and therefore, we the Members of the Select Committee who wished to move amendments to those vital matters are out of court and we were out of order. We submitted to the ruling and we had only six days to discuss this Bill in the heat of July and we did the best that we could under the circumstances within the short time at our disposal and within the narrow limits which were laid down by the Hon. Law Minister at that time. That was not only the Law Minister, but there were certain enthusiastic Members of the Select Committee who thought: " Well now is the time we have got this Bill; let us push it through in this very session and before the month of October or November arrives, it will be a part of the Statute Book. " Several objections and several arguments were given: ' Let us wait for a few months.' Ultimately the Select Committee decided to proceed with it on a majority of two.

Things have gone in such a way that within one month this Bill could not be put on the Statute Book. Things have dragged on due to circumstances much beyond the control of us, beyond the control of the majority of the select Committee. One point which I raised in the Select Committee and one which I also dwelt at some length in my note of dissent and which I ask the permission of the House to repeat was that this Bill is a very half hearted, and a very, if I may say so, a very truncated measure. I fully endorse the view and I have no hesitation in repeating it, that the time has come when we must give full rights to our sisters and our daughters; that is to say, the time has come

when we cannot allow the old texts to continue, or their interpretations which have been given by the British Courts that a woman has not got a full estate, that a woman is not entitled to succeed to this type of property or to that type of property and so on and so forth that must go. In the first place I maintain, and I have always maintained it that all that is against our original Hindu law. I maintain and I hope to show; if the Hon. Deputy Speaker will permit me a few more minutes, that this theory that a woman's estate is limited is a creature, a creation of the British Indian Courts. It is not countenanced, not supported by the *Mitakshara* law not by the *Mayukha* nor by the *Smritis*. All that must be done away with But in order to do that, what shall we do? I suggested that some changes should be made in the Bill, that we must look at it from another angle which will give woman a higher status than we have got in the Bill; they said " No, we have got the Bill having the *imprimature* of Shri B. N. Rau and the authority of Dr. Ambedkar, and no change of a substantial nature can be made in it. " That was the attitude of the supporters of the Bill. If I may be pardoned for saying that, in the Select Committee and later on also, they have not been less fanatical than the opponents of the Bill. They say, " Well there is the Bill, take it or leave it and reject it if you can. That is being repeated now after the declaration which the Prime Minister was pleased to make a few days ago, and which I know, must naturally, tie down most Members of the House in their vote."

Some Honourable Members: No, no.

Dr. Bakhshi Tek Chand : Well, it will have an unconscious effect, even if permission is given to everybody to vote as he likes. Well, I ask the friends who are supporters of the Bill, I ask my sisters ' Does this Bill do you full justice? Is this all that you want? Does it give you the rights you want?' I say, ' no '; I say most emphatically, ' no, it does not'. It is a most truncated and half-hearted measure, and if I may say so, it will do the maximum of mischief to Hindu society and the minimum of good to the members of the female sex.

An Honourable Member: Are they agreeable to your solution?

Dr. Bakhshi Tek Chand: I do not know. Now I will deal with a few of the provisions of the Bill. One of the provisions of the Bill is that the chapters relating to succession, etc. will not apply to inheritance of agricultural land. Why? Because at that time when the Bill was introduced, the position was that under Entry 7 of the Seventh Schedule of the Government of India Act of 1935, this Legislature, the Indian Legislature could not pass any law relating to agricultural land, that was a provincial subject. Well, that was the position at that time. In 1938, Dr. Deshmukh's Bill was extended to include agricultural land also. The matter went then before the Federal Court and the Federal Court agreed that this was *ultra vires* of the Indian Legislature. That was the

decision of the Court and that was the provision of the Government of India Act, 1935. And therefore naturally. Sir B. N. Rau and the Committee, as well as Dr. Ambedkar and his Law department omitted it and they said this is a matter which will have to be left to each Provincial Legislature to deal with. But luckily, by that time, the Drafting Committee of the Constituent Assembly had published its Draft Constitution. In that Draft Constitution it has been stated that Entry 7 in the Seventh Schedule be amended so as to include or rather to make the subject a concurrent subject, namely, the subject of succession to immovable property or movable property, including agricultural land. That was the provision. I suggested at that time, in my minute of dissent, both in the Select Committee and in my minute of dissent, that we might wait for a few months so that whatever measure we adopt to give redress to females, giving them a share in their father's or husband's property that that might apply to all kinds of properties. What you want is uniformity of law, and I venture to point out that instead of uniformity, you will have diversity, and instead of unity, you will have confusion. If this provision had been passed, the position would have been, when a man's immovable property is situated in a town, when he has urban property, to that movable property one law, namely the law of Dr. Ambedkar's court but with regard to agricultural land situated, some three miles off,, the old law will continue. The sons will have all the rights from the moment of their birth and the rule of survivorship will remain, and nobody will know what is the position with regard to the property. See how many loopholes you are leaving? If you do not want to give the property to your daughter, you can sell her share in Poona and go and buy agricultural land five miles outside and then you can deprive your daughter of her share, and thus circumvent the provisions of the Bill. But now luckily, what has happened? Today when we are at the end of this first of the second reading of this Bill, the situation is this. The suggestion of Dr. Ambedkar and the Drafting Committee has been unanimously accepted by the Constituent Assembly and it will, God willing, come into force on the 26th January which will be long before the third reading of this Bill. I asked the other day whether he is going to make a change now so that this particular clause in the Bill which excludes agricultural land be removed so that we might give one fourth or half or full share or no share, and he said, " No."

The Honourable Dr. B. R. Ambedkar: I do not think the Hon. Member is entitled to disclose a conversation. All I said was that that was my present view : later on we may reconsider the position. Now that we have power, one of the impediments in our way had been removed.

Dr. Bakhshi Tek Chand: I am very glad that my learned friend has corrected me. I am much thankful to him for the correction, that his present

intention is not to repeal that clause, but to retain the distinction but later on...

The Honourable Dr. B. R. Ambedkar : I have not said anything like that at all. I do not think my friend is entitled to use a conversation.

Dr. Bakhshi Tek Chand: No conversation, but what you have said now on the floor of the House.

The Honourable Dr. B.R. Ambedkar: These are matters which I alone cannot decide. I have to take the consent of my colleagues.

Mr. Deputy speaker : The Hon. Member may go on with the Bill as it is, saying that the Bill as it is does not provide for agricultural land. He need not refer to private conversations.

Dr. Bakhshi Tek Chand : Take the Bill as it is. Whether the change will be made now or later with the consent of the Cabinet or other parties is a different matter. But what is the position now. Agricultural land is being excluded. Agricultural land forms more than 80 percent of the property of Hindus in any part of the country. Therefore our sisters, daughters and other female relations are excluded under this Bill from succession to a very large portion of property. That is another reason for which it is necessary to reconsider the Bill and not to proceed with it in its present form Whatever law you may have, you should apply it to all property—agricultural, urban, movable or immovable.

Pandit Balkrishna Sharma (U. P. : General) : If my Hon. friend will give way for a minute I would like to know, whether, if this law is applied to agricultural property also, it will not lead to veritable fragmentation of land. *(Interruption.)*

Mr. Deputy Speaker: Let there be no interruptions. The closure may come in at any time and I am giving a warning to the House in advance. The less the interruptions the greater is the chance for a larger number of speakers to take part.

Dr. Bakhshi Tck Chand: With regard to fragmentation I am not afraid of it. It is bound to come about if you have a larger number of heirs. If a man has five sons, there is bound to be fragmentation and if he has two daughters also there will be more fragmentation. I am not afraid of fragmentation whether with regard to immovable or urban property also. If you have one or two houses, two sons and five daughters and they decide to divide the property, there is bound to be fragmentation. Therefore, with great deference to both parties this argument is wholly extraneous and should be left out of consideration.

Under this Bill more than 80 percent of the property is being excluded. That is one serious drawback from the point of view of reform.

One of the objections raised is this. A man may have a house and a small

bit of land. Some of the villagers have a *kutch*a shop also. There will be so many divisions and the son-in-law will be introduced into the family. Some supporters of the Bill say that it is a reasonable objection and therefore we must introduce a clause at the third reading by which the dwelling house of the family will be excluded from succession. That is to say, the daughter though she will be entitled to succession, will not get a share in the dwelling house. If that is so that will reduce the urban property still more. Out of the 30 crores of Hindus, except a few rich people, how many possess more than one dwelling house in which the whole family lives? Normally in the villages it is one house and a piece of land. If a trader he has a small *kutch*a shop also. If you exclude the dwelling house from the inheritance of the daughter, you take out another slice from the property.

Another objection is that the sons-in-law will be introduced, and what might happen in most cases is that they will create trouble and since they could not manage the property in another village, they will arrange to sell it to some local person. That will lead to the disruption of the family. To meet that, suggestions are being made that the daughter will no doubt get a share but only its money value. You must then give to the brothers a right of pre-emption within one or two years of the marriage; the brothers will be entitled to pay to the sister or her husband the money value of the share and keep the property. That again, I submit, will lead to great trouble. It will be difficult to ascertain the market value of the property and this will lead to endless litigation and confer little on the daughter. Agricultural land is excluded, dwelling houses are excluded and various other things will come in. It may be said that the whole share is too much, give her a half or a quarter share, I ask why not give her a full share?

If you analyse the Bill calmly and quietly and not take as smriti which has come down from the Heavens, it will be found that it does not give the minimum of benefit to the female heirs.

This Bill will destroy the Hindu joint family. Whether, it is good or bad, people still cling to it. Yesterday our revered brother Mr. Alladi Krishnaswami Ayyar pointed out that in the villages in Madras it is still in force. My friend Mr. Santhanam may take another view. But it is there. Yet it is there and has a hold on some people, whatever might their proportion. All other principles of Hindu law such as survivorship, succession, the son having a share you are abolishing. What is the necessity? The necessity is to enable the daughter to get a share. I therefore submit that parts 5, 6 and 7 of the Bill introduce drastic changes in the Hindu family system and give the minimum benefit in its present form to the females.

I would therefore ask the supporters of the Bill whether it is necessary to

push the Bill to a final vote at this stage either tomorrow or in the next session. Is it not desirable to give the matter more consideration and to see whether there is any other way of securing full benefit to the female members of a joint Hindu family, whether they are governed by *Mitakshara* or *Dayabhaga* and at the same time causing the least disturbance to the systems that prevail in various parts of the country.

I have made my submissions both to the orthodox and reformer friends. I have to make only one suggestion. I have not worked out the scheme in my mind, it will take a lot of time. But I shall place before the House the broad outlines of it And I will ask Dr. Ambedkar, I will ask the other legal Members, I will ask the reforming Members, I will ask the orthodox Members to see whether that is not an alternative worth considering. In fact, up to this morning I was hesitating to speak on the subject and my view was to place it before the Committee which, it has been promised, will be meeting shortly and I had intended if I am a member of that Committee to place it there. But when I was called upon to speak to day I thought the best course was to place it before the House. My suggestion is this.

What is our objective? Our objective is to give to the female members of our family full right in the property. What we should do therefore is this. Do not disturb the joint family. Do not overrule the law of survivorship. Let them continue as they are as long as they can. But a woman, as soon as she is married, should in the *Mitakshara* family become a full co-parcener in that property. At present she is a member of a joint family but not a member of the co-parcenary. I will ask hon. Members to permit me for three minutes just to place my proposal before them and then to consider it. Any interruption on that point will not help. It is only a proposal for your consideration, for the consideration of the Committee and for the consideration of the Law Minister and the Prime Minister and others who may be interested in this matter. At present every woman after her marriage passes into the *gotra* of the husband, and she becomes a member of the joint family but with very limited rights. Up till 1937, her rights as given by the British Indian courts were those of maintenance only. She had no legal right in the property, she could only stay and enjoy it.

That was the position. In 1937 came the Deshmukh Act that on the husband's death she will be entitled to a share of the property—the same share as the husband—and also entitled to have her share separated if she could not pull on with the brothers-in-law or other members of the family. What I am suggesting is this. Add to that, only one thing namely that she will become a full co-parcener. Just as in the *Mitakshara* family, the moment a son is born he acquires the right in the father's ancestral property and from

the moment of this birth becomes a co-sharer or co-parcener, similarly let a woman from the moment of her marriage become a co-parcener, with full rights. There may be her own sons and others. They will all continue to live together without any necessity to separate. But if she thinks that it is not possible to live together with them she can separate her share and take it away—separate it in the same manner as she can do under the 1937 Act after the death of her husband. That is one change. If you do that you will not disturb the father's property and you will not disturb the joint family. Let the joint family continue as long as it can. Somebody said it was crumbling. Somebody said it was crumbling only for the purpose of Income-tax. Others asked as to how many people pay Income -tax and said that 99.5 percent. of the Hindu population does not pay Income-tax still they have the joint family system. These arguments mean nothing. If these are the circumstances under which the joint family is crumbling, let it crumble. But let it continue for as long as it can.

What I am suggesting is not something new or something which is against the spirit of Hindu Law. If I may say so, it is in accordance with the spirit of the original law—the law of the Veda, the law as given in the early *Shashtra* by Jaimini and others. I do not want to prolong my speech. But I would like to state what the position was in Vedic times and in times which shortly followed. You please read certain portions in Dwarkanath Mitter's book published in 1913 on " the position of women in Hindu Law". You also please read in Volume XI of the Allahabad Law Journal a very learned article by the late Dr. Satish Chandra Banerjee of Allahabad, one of the most promising and most eminent lawyers that this country had produced but whose career was unfortunately cut short by his death at a very early age. It is a very elaborate article. Also the book of Dr. K. Biswas of Patna. All these contain quotations from the Vedas and other persons who came in before Manu as to what the position of women at that time was. The position of the women at that time was that, she was a full owner of the property of the husband. Maharishi Jaimni says, commenting on the Vedic texts, that " the wife is entitled to the wealth from the moment of her marriage and whatever is acquired by the husband also belongs to her. " That is to say she becomes a full coparcener. Then, dealing with another text, he says " Not only is the woman possessed of the same religious and civil rights as man but all wealth which he (that is the husband) acquires is at her disposal. She is entitled to control even the disposition of acquired property by the husband "—his own acquired property. That is the conception of a co-parcener which we had. Just as a son from the moment of his birth gets a share and can control the father's alienations, unless they are for family necessities or for just purposes, similarly should the

woman have the right from the time of her marriage. My submission is, let us go back to- these old Vedic texts and all our Hindu law and its glory before the period of degradation began and the rights of women came to be curtailed, and let us make her a co-parcener. That is one branch of my suggestion.

The other branch of my suggestion is the one which Sir Alladi Krishnaswami Ayyar made yesterday that a woman should have full right to alienate her property and this fiction of a Hindu widow's status must be done away with. With regard to that I would ask the indulgence of the House for two minutes. All my friends who are opposing the Bill say " we want to go to the *Shashtra* ". We don't want to go beyond the *Shastras*, particularly the *Mitakshara* which was followed by the country. With the exception of Bengal the whole country has followed it. What was the law of *Mitakshara* on this point ?

1 would ask you to look to Vijnaneshwar, Chapter II, Section 11 verses

2 and 4 of his commentary on Yagnavalkya as to what is a woman's *stridhan*. After quoting certain things, that is whatever is given by way of presents to the woman at the time of marriage—which is not important—he says: " And in addition to that, the *stridhan* consists of all property obtained by inheritance by partition, by seizure (that is by adverse possession)" and soon. That is to say, the property inherited by the woman from her husband or from her father or anybody else ought to be her full absolute property and nobody can control it. This was the law laid down by Vijnaneshwar in the 11th Century. That had continued to be law until the British came. Another commentator of the Banaras school N. S. Viramatadhira repeats it. Nilakantha, the author of *Mayukha* which is the leading authority in the Bombay Province, particularly in Gujarat and the Island of Bombay again repeats it. Except in Bengal in every other Province, that was the law until the British came. When the British came they said. " Well, let us examine the original texts of *Mitakshara* ". They said it was a commentary upon Yajnavalkya. Yajnavalkya used certain specific notes and used the word *adi* and *adi* is interpreted by Vijnaneshwar in this manner. That was the position. A great deal of struggle went on. Of course some Courts struggled, particularly Madras, for a number of years. But ultimately the Privy Council said, " Well we must do it", though it was quite contrary to the rule which the Privy Council itself had laid down that if there was a difference between the *Smritikar* and the commentary we must follow the commentator. That was the rule they laid down, but somehow or other they departed from it here.

So, I say, go back to the Vedic position with regard to the position of a daughter's and a husband's family, and go back to the position of *Mitakshara*.

Tear off all this mass of judicial literature which has arisen in this country during all this period and go back to what was the law up to the eighteenth century. If you do these two things, I tell my friends, the supporters of the Bill and those who want to reform, that you will be getting much more. If the woman becomes a coparcener in a husband's family. You don't disturb the joint family; the sons may continue. There may be good things in it, there may be bad things, but let it crumble away and die its natural death later on. But give the woman a right in her husband's property, the same right as the son or the husband has. There may be some further points to be considered as to how this property is to go after her death and so on, but these are details into which I won't enter. I will ask Hon. Members to give this matter the most serious consideration and then to see whether this is not a scheme which is not much better.

With regard to the unmarried daughter, I see no reason whatsoever why she should not get a full share along with the brothers in the father's property, because no dowry has been given to her and she should not be made dependent. Some of my friends have been painting glowing pictures of the love which the brother has for the sister and how they take great efforts for the marriage of the sister. Quite true some people do it, many do it, but we know of cases also to the contrary where the brothers, particularly the brother's wife comes the whole thing and very little is left by way of dowry to the sister particularly if she is going into a family which is not very strong and has not got much influence in the village. So, we must make provision for that also. May I say that there is considerable authority in the *Shastras* also for that. Some say her share should be one-fourth, some say equal, some say it should be one-half. I am not for half. Following the Mohammedan law: she must be given full.

Shri B. L. Sondhi (East Punjab: General) : For how long will the unmarried girl continue to enjoy the property?

Dr. Bakhshi Tek Chand: Once property is vested, it vests and there is no question of divesting it. After all it won't create much disturbance in the family. We must make some provision; we can see that adjustments are made later on.

A word regarding the Chapter relating to marriage and the Chapter on divorce. My objection to this portion of the Bill is a very simple one. The first part of the Chapter deals with monogamy and I am a whole-hearted supporter of the provision that every Hindu should marry once only and not more than that. The majority of our people do that.

Shri H. V. Kamath: Once or not at all.

Dr. Bakhshi Tek Chand : All the arguments that there is no son etc., are

of no use. Where is the guarantee that if you marry three wives one after another, one of them will produce a son? It is all a matter of chance. Therefore that is an argument which does not appeal to me in the least. As a matter of fact and as a matter of practice the large majority of Hindus have only one wife and I see no reason why that provision should not be put in here.

Shri Lakshminaran Sahu: In Utkal there is an excess of three lakhs of women. If you start talking of one for one, I should like to know where would you provide for the three lakh extras ?

Dr. Bakhshi Tek Chand: Here again religion has been brought in. In Baroda, in 1931 the Monogamy and Divorce Bill was passed by a legislature 95 percent of the members of which were Hindus, under the aegis of a Maharaja who was an orthodox Hindu. For nineteen years that Bill has been in force. Can we say that Hinduism in Baroda has come to an end because of that Bill? In Bombay Mrs. Munshi's Bill was passed in 1946 and became a part of the law of the land. In Madras, last year, the Madras Legislature passed a similar Bill. Thus, we have got practically the whole of South India where monogamy is a law of the land. Hinduism there has not been destroyed. All our Madras friends are as strong and as kicking as they ever were. Therefore, I consider this provision is a very salutary one and must be maintained.

Shri Gokulbhai Daulatram Bhatt: If you, Sir, permit I should like to ask one or two questions for information sake.

Mr. Deputy Speaker: He does not give in.

Shri Gokulbhai Daulatram Bhatt : Whatever you have said about monogamy is quite true but what I want to ask is whether a man is permitted to remarry in the life time of his first wife if she consents to such marriage?

Dr. Bakhshi Tek Chand : I am very glad, our respectable brother Gokulbhaiji has put that question. I say that you can get a woman's consent in any way you like. I have seen notorious cases of that. In one case there was an old man and an old woman. A very learned pandit, an astrologer was brought in and after performing all the *pajahs* he said to the woman. " Your husband is going to die during the course of the next three months; the only remedy against that is that he should remarry and if he marries again he will have a son " and all that. And that old lady, thinking that this great calamity was coming upon her, gave her consent. Now of course, there is not only one woman but five women in that house. (*Interruption.*)

Mr. Deputy Speaker : Order, order. The Hon. Member has been anxious to sit down for the past half an hour but on account of the frequent questions he has to go on.

Dr. Bakhshi Tek Chand: I come to the last point, the question of divorce. One of the great mistakes which have been made in this Bill is to make the provisions for the dissolution of civil marriages similar to the provisions for the dissolution of sacramental marriages. In this respect, the Bill as now reported by the Select Committee differs from the Bill which was originally framed by Sir B. N. Rau's Committee in 1944 and then revised by him in 1945. What I say is so far as civil marriage is concerned you maintain the present law which gives the same rights as the Bill gives. But do not try to introduce provision for conversion of sacramental marriage into civil marriage. Sacrament is a sacrament. As has been originally suggested and as has been permitted by some of our old *Smritikars*, the rule of divorce should be limited within the narrowest possible bounds. With regard to this B. N. Rau's position was this.

Impotency at the time of the marriage which has continued up to the date of divorce. This is a condition to which no reasonable person can object.

Then the person may have been an idiot and the fact may have been concealed. This is a second physical thing, which cannot be quarrelled with.

In addition to these two conditions, you can allow divorce when a person changes religion. A Hindu may become a Muslim and marry. Under the fiction in the Hindu law, law that the marriage is indissoluble and the sacrament still continues, the wife is helpless. On what principle can you do that when the husband has changed his religion and gone to another and married wives according to his new religion?

Shri Mahavir Tyagi: Would it not result in this that whenever a divorce is needed instead of undergoing the routine legal proceedings, people will change their religion?

Dr. Bakhshi Tek Chand : No, they won't change their religion. In addition to the above conditions, you can add desertion of the woman for a certain period; call it five years, six years or seven years. These conditions are, I submit, nothing new. They were known to our ancient *Smritikars*. I feel that divorce should be limited to these three or four cases. Have we not seen cases in which the husband after marrying has abandoned his wife? Have these unfortunate women no remedy? They should have a remedy. But I would limit it to these three or four conditions. But do not introduce litigation. If it is a case of providing adultery, evidence can be faked. Some sort of collusive evidence can be produced and the charge proved. But I do want to introduce that in a sacramental marriage. My submission as in my minute of dissent is that the chapter relating to marriage and divorce should be recast. We have two kinds of Hindu marriages: the civil and the sacramental. In the one, you know the conditions under which it can be dissolved. In the other,

you can have all your new modern ideas. I would ask the supporters of this Bill to give their serious consideration to it and see whether it improves the position of women. If my suggestions are accepted, it will make the present Bill much better and women will rise to the full stature of their womanhood. They will have full right to property. It will give them emancipation on the economic side. Under the new Constitution there is adult franchise. We have women Ministers in charge of different branches of Administration. We cannot limit the right of woman, the mistress of the house and say that she would be entitled only to maintenance but not other rights. That would be a gross injustice. It would be contrary to our ancient Laws. What was introduced in between might have suited the particular circumstances and conditions of those days, but they are all outworn. They are not part of the Hindu religion and should be done away with. We should get rid of this jungle growth and go back to Vedic conceptions. These are briefly my submissions and I would ask everybody to give them their serious consideration.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways) : May I ask one question in clarification? Supposing a woman becomes a co-parcener in her husband's family ... will her share be part of the husband's share or will it be separate?

Dr. Bakhshi Tek Chand : So long as they are joint, it will be joint ownership of the whole family just as you and your sons are co-parceners in the property; but if there is a division, then she will become independent. It is a new addition just as a son. It is very simple.

An Honourable Member: Sir, the question may now be put.

Some Honourable Members: No. no.

Maulana Hasrat Mohani (U. P. Muslim) : I will take only five minutes.

Some Honourable Members : *rose—*

Mr. Deputy Speaker : Order, order. Will all Members kindly take their seats? I find a large number of Members interested in speaking, but as I said yesterday, if we go on at this rate, we may have no time even if we sit for a month or two months. There is no tendency on the part of Members to limit their speeches. This Hindu Code covers not only Hindus, Hindu law of marriage and customs but it applies to Jains and Sikhs also. It does not apply to Muslims, Christians and Parsis. *{interruption}*.

An Honourable Member: There are clauses which affect other people: also.

Mr. Deputy Speaker: Hon. Members know fully well that when the Speaker is on his legs, no Member should get up. I need not remind hon. Members about that. I, therefore, propose to call a Member of Jain community and a member of Sikh community and then others. Prof. K. T. Shah.

Shri H. J. Khandekar: (C. P. and Berar: General): Why not the Harijans?

Maulana Hasrat Mohani: *rose.*

Mr. Deputy Speaker : I am not going to allow this Hon. Member to come in now I will first start with the others.

The Honourable Shri Satyanarayan Sinha (Minister of State for Parliamentary Affairs) : I want to make one suggestion. If the House agrees, we can sit till 7 o' clock today and even after that, if members are not satisfied and there are still others who want to speak we can sit on Saturday also. Government is prepared to allot half of Saturday for this business. There will be no Question Hour on Saturday and before Lunch we will have more than 2- hours. If that suits your purpose and if the House agrees, the House agrees, then that will obviate all the difficulties.

Mr. Deputy Speaker: I think it is a very reasonable proposal. I have already said the House will sit on Saturday. There is no going back upon that. If owing to exigencies of public business, it is necessary that we should sit on Saturday, heavens will not fall. We are sitting on Saturdays for committee meetings. I have requested the Government to cancel Select Committee meetings on that day. I shall also see that no Select Committee meetings are fixed for Saturday. Hon. Members will be relieved of all other parliamentary work so that they can take part in the discussion on the Hindu Code.

The Hon. Minister for Parliamentary Affairs has just suggested, on behalf of Government, that they are willing to allot Saturday, which they had originally intended for other Government business, for the discussion on Hindu Code. Finding that more Hon. Members are anxious to speak, they are prepared to allot Saturday, the forenoon of which will be earmarked for non-official Member and the afternoon, allotted to the Hon. Minister of Law for his reply. In addition, he makes another suggestion for the acceptance of the House. It is open to them to accept it or to reject it. In view of that there are many Hon. Members who are anxious to speak. We may sit till seven o'clock today. I leave it at 5 o'clock today, when I shall find out whether the House is tired or is still active to continue the discussion. Personally I and my friends of the panel of chairmen are prepared to sit till seven o'clock. I am entirely in the hands of the House in regard to this matter.

The Honourable Shri Satyanarayan Sinha : Sir, I said on behalf of Government, that they are prepared to allot half of Saturday for the discussion on the Hindu Code Bill. But as you have already said that the whole of the day would be allotted for this purpose, Government will agree to that.

Mr. Deputy Speaker: I hope Government will accept the suggestion which I have made.

Pandit Govind Malaviya (U. P. General): Sir, I wish to submit to you in

connection with your ruling, that on the assumption that Saturday will be a free day, some of us have made important and unavoidable engagements elsewhere. Speaking about myself, I have got some unavoidable and important engagement on that day. I hope, Sir, you will keep that fact also in mind. If we had known that Saturday would be a working day we would not have done that. Now this will be upsetting all our engagements, and I, therefore, request that instead of Saturday some other day might be fixed for the discussion of this important measure. It is open to the Government to do so easily. They can take up Government work on Saturday and allot some other day for the discussion of this measure. We will have no objection to that. But I hope that the House will appreciate that if others who wish to take part in this debate, are not able to come on that day, they should be given some consideration.

The Honourable Shri Satyanarayan Sinha : I think. Government will have no objection if Hon. Members wish to sit on Monday. On Saturday we shall take up other Government business.

Shri Ajit Prasad Jain (U. P. General) : Why not continue tomorrow and finish the discussion on this Bill?

The Honourable Shri Satyanarayan Sinha : On Saturday we are meeting for Transacting Government business. Government is prepared to have the discussion of this Bill put for Monday, but all the same Saturday will be an Official day.

The Honourable Shri K. Santhanam: Members will have less time on Monday than on Saturday, But if the members are willing to conclude the debate on Monday we won't have any objection. But if the postponement is due to dilatory tactics. . . .

Mr. Deputy Speaker: I am really sorry, our friends are not co-operating. A suggestion came from Pandit Govind Malaviya and some other Hon. Members—he is an important member and is taking keen interest in this Bill on one side or the other—that they would prefer this measure being taken up on any day other than Saturday and Government in consideration of their wishes was prepared to take it up on Monday. The Government spokesman has said so. Hon. Members are aware that on Monday there will be the question hour. Knowing this full well they have accepted that day.

Sjt. Rohini Kumar Chaudhari: Most respectfully I would like to point out to you, Sir, that Saturday is a holiday given to us for certain purposes. I am willing to forego that holiday if there is an important reason for it. Now I want to ask this House, is it convinced, is it willing to finish this Bill as early as possible? What is the urgency for this Bill? We have more important Bills. We have the Insurance Bill which, according to you, must be passed into law this

session. If this Bill.....

Mr. Deputy Speaker : The hon. Member will resume his seat. We have been hearing this objection from some Hon. Members that there is no hurry to get on with this Bill. I am afraid there is no unanimity of opinion in this House so far as that matter is concerned. If there was that unanimity we would not be thirsting for time like this. It is a well known fact that opinion on that point is divided. On the mere suggestion of one Hon. Member I do not want to take the opinion of this House.

Now it is clear that Saturday will be an official day when official business other than the Hindu Code Bill will be transacted. On Monday I propose to allow the non-official members to speak till mid-day In the afternoon I propose to call upon the Hon. Dr. Ambedkar.

Shri Mahavir Tyagi: Several of us have been waiting long to catch your eye. Shall I take it as your ruling that, on the Hindu Code Bill no more Hindus shall be allowed to speak?

Mr. Deputy Speaker: I did not say so; nor would I say so. The Hon. Member has, unfortunately, though he is very alert, misunderstood me. All that, I said was that, not one single Jain or Sikh member, to whom also this Bill equally applies, has spoken.

Shri H. J. Khandekar: What about Harijans?

Mr. Deputy Speaker: The sponsor of this Bill is the Leader of the Harijans. It is no good saying that the Harijans do not belong to the Hindu community. I think Harijans are as much Hindus as any others This caste consciousness need not be pursued any further.

All that I said was that Jain and Sikh members will be given preference to other members. I have no intention of shutting out any others.

As it stands at present, I find that the suggestion of the Government is very reasonable. They have spent so many days on the discussion of this Bill and have given one more day. If still on Monday, it is the general wish of the House that they should go on, I am absolutely in the hands of the House. So far as the Chair is concerned, it is satisfied that there has been sufficient discussion.

Shri Mahavir Tyagi : I protest against this. I feel that the Chair's benign eye should not make a distinction between any class, caste or creed. Your eye should go round the House without distinction of majority or minority.

Mr. Deputy Speaker : The Hon. Member has thoroughly misunderstood me. Whenever a Bill comes up for discussion which affects certain communities—unfortunately there are different communities in this country—a chance should be given to the representatives of all communities to express their views. If the Hon. Member reads this Bill, he will find that the scope of

the Bill includes Jains and Sikhs also. A number of Hindus have already spoken and so I must allow some Jains and Sikhs to speak now. We must know their viewpoints before we go through the Bill clause by clause. Shri Mahavir Tyagi: I protest.....

Mr. Deputy Speaker: I cannot tolerate this. The Hon. Member will kindly note that it is improper to use this language.

Prof. K. T. Shah (Bihar General) : Sir, originally when the Bill was first introduced and this motion came before the House, I had no great intention to intervene in the debate. But now that the debate has proceeded so far and a variety of view have been placed before this House, now that there is freedom of voting from Party mandate, I feel it necessary to make some observations arising out of the motion, and of the Bill, which I trust, will receive the consideration of the Hon. the Law Minister and his colleagues.

You Sir, have been pleased to say that I have been called upon as a Jain to speak on the matter. I stand here only as a member of the -House, and can claim no special right or privilege to speak as a member of any community. I call myself only as Indian citizen and do not regard a belief in any particular faith a qualification or a disqualification for participating in discussions like this. I speak only as a member of this House.

Sjt. Rohini Kumar Chaudhari : On a point of order. Sir, you called upon Prof, Shah to speak on behalf of the Jains but he says that he does not claim to represent the Jains.

Mr. Deputy Speaker: It is no point of order.

Prof. K. T. Shah : I may also add at the same time that I am going to support in general the provisions underlying this Bill even though I happen to have tried to form an opposition which is not yet recognised. Coming though, as it does, from a member professing to be in the opposition, and coming also from one who has consistently opposed almost every provision of the Constitution, every attempt at legislation of a structural or reforming kind that this Government has made. I hope and trust that the support that I am now extending, unconditionally and unreservedly to Bill will meet with the appreciation that it deserves. Unless Government feel the wisdom of the old saying that the Devil may also quote the Scripture and that, therefore any support coming from me should be looked at askance, it should be welcome. If that is their view, the opposition to this Bill would be served much more effectively by me than I at least would like to wish.

Holding this view. Sir, and offering my co-operation in this manner, I would like to say in all humility, with the utmost deference to this House, and even at the risk of incurring the charge that we as a people lack a sense of humor, I would not like to use any expression or illustrating which might in any way

introduce a tone of levity or lightness in this discussion. I regard this matter, this subject, as so vital to the very existence of our country, I regard this Bill as of such far-reaching consequence that I will not allow any expression or illustration to creep into my remarks which might in any way give any observer, any outsider, any student of our affairs, an appearance as though we are not sufficiently serious in this matter.

Having made these observations, I would proceed to examine some of the objections that have been raised some of the pleas that have been urged in regard to the subject matter or even the basic principle of the Bill. The challenge has been made. Sir, whether this body is competent to deal with a subject of this character, whether the House has been elected on a clear issue to determine the contents of this Bill, or whether there is sufficient urgency in this matter to allow this House to deal with this proposition. I for one do not think that there can or should be a question about the competence of this body to deal with subjects of this character. The Hon. Member, who spoke just before me, has given a number of illustrations in which structural changes including the Constitution had been proposed by legislative measures in this House and carried. Even more important reforms had been made by the legislature preceding this which was not of the same sovereign character that this Legislature is, and therefore the question as to the competence of this House to deal with matters of this character seems to me to be irrelevant, unbecoming and if I may say so, not quite respectful towards this Assembly, for while it is quite true that this single issue was not placed before the electors, those of us who recollect the manner and method by which we have been elected to this House will realize that not on any issue was this House elected except that of acquiring independence and shaping a constitution for the country. If you press that argument too far, I am afraid you will render many matters with which this House has dealt with as either illegal or *ultra vires*. I would not like therefore that any suggestion of this character can be or should be advanced so as to throw any doubt whatsoever, on the competence, the authority and correctness of this House in dealing with and disposing of such matters.

Sir, in general elections also, it is not possible to have each issue separately examined. As all those, who have an experience of popular general elections, will realise general elections are always fought on a multiplicity of issues. There is therefore not any clear indication of a majority on any individual issue of such complexity as we are dealing with now. Unless the Constitution provides a method like referendum, unless we had a constitutional device like that suggested by Mr. Gokulbhai Bhatt, we would find it extremely difficult if not impossible, to get a clear verdict of the people

on issues of this character. There would really be no means of ascertaining popular opinion. Even then there may be those who would say, given the state of public education in this country, given the state or the condition in which the press in the country is monopolised by a few individuals, given also the lack of experience of the voter in matters of this character, the decision of the people, even if competent, may be open to question. I would therefore suggest that an argument of this character ought not to influence the judgement of this House and we should confine ourselves to the discussion of the proposition, as I am happy to see in many quarters it has been.

The opposition to the Bill is led and is made up of people for whose opinions, I have personally very warm regard. I am not, therefore, prepared to say that this is an opposition of vested interests, that this is an opposition inspired by ulterior motives or dictated by other considerations. I fully realise, Sir, that the opposition has in many cases very serious grounds for holding the views that they do, and though, I have the misfortune of differing from them, I cannot for that reason say that their views are not entitled to the widest consideration we can give them. On that standpoint, I feel that there is a great deal of force in the arguments of those who question the urgency of the matter and are prepared—if not differ discussion— at least take much more time on the discussion than seems likely to give to this matter, but by saying this, I should not be misunderstood I should not be understood to say, that I would like the matter to be indefinitely postponed. I should like this body whose sovereignty, I would not question, to give a decision on this matter once and for all, and though I am fully alive to the consideration advanced by one of the hon. speakers that there is no guarantee that the next House will accept the decision, even if we give it, I feel that once an indication is given, once a sign-post is erected, once a road is built, it would be difficult to reverse the engine and go back. However, that is a matter of faith rather than of reason, of general belief rather than of intellectual conviction, and I am therefore, open on this matter, altogether, but taking however into consideration the main points that have been urged against the merits of the provisions contained in the Bill, I feel it impossible to accord my support to the opponents of the several sections of the Bill, several chapters in the Bill, or the provisions in the Bill. The main difficulty centres round, so far as I can see on the position of women. I have already said Sir, that I have not the slightest desire to bring in the least bit of levity in this discussion, and therefore, some of the arguments, some of the points made earlier in this debate on this matter leave me somewhat cold. We are building up a country of equal citizens irrespective of religion, sex, class or creed. If that is the principle upon which we take our stand, if that is the preamble of our Constitution and the

guiding principle of the life that we are to build up for this country hereafter then I think that the provisions of this Bill are in full conformity with the ideals enunciated in the preamble to the Constitution and as such, anything which we now propose, that would be in any way different from or derogatory of this provision, ought not to be accepted by us. The attempt made in this bill to place women on a position of equality in regard to family relationships, in regard to inheritance, in regard to property, in regard to marriage or divorce, is an attempt not only in consonance with conditions now prevailing all over the world and coming into vogue in our society as well, but are conditions, which in my opinion are dictated by a full realisation of the actual conditions and observed trend of events everywhere. It is true that for ages past, marriage has been regarded as a sacrament, but there is nothing, so far as I can see in this Bill, to prevent anybody from realising and treating it even today as a sacrament. After all, I venture to submit, sacrament is a mere matter of your own heart and creation than an imposition from outside. How many sacraments are there, which though continuing to be sacraments are daily broken, broken in the worst possible manner and disgrace, both the breakers and those who are parties to that? Sacraments cannot change merely because the law gives a particular character to the relationship of man and wife as is attempted to be in this Bill. Whether or not, the law declares and recognises a union to be a civil marriage or a civil contract, those who are parties to such a union, who have a very highly idealised opinion of the nature and function and objects of such a union will not cease to continue to do so. If however, circumstances develop which make it impossible for them any longer to continue in that position, if conditions develop which make it impossible to maintain that high ideal. I for one think that it would be much better to discontinue the relationship by any legal and reasonable manner that can be found than to continue it to the mutual prejudice, to the continued misery of the parties concerned or the offspring. It is not a very pleasant matter, Sir, to suggest that there should be freedom for divorce if unions could be all made in the form in the ideal, in the spirit in which they were supposed to have been made, but we live in a mundane world, with material considerations, with human weaknesses and therefore, it is too much to expect that merely by an ordinance, merely by a fireman, we would continue to keep and maintain unions in the idealist sense in which they have been believed conceived and maintained.

Permission, therefore to dissolve in a legal, reasonable public manner unions which have become oppressive, which have become a source of misery to the parties and their off-springs, is nothing more in my opinion that a recognition of the actual prevailing circumstances and the developments that

may have in any given case taken place, and therefore, it is that even though one may not like the idea, one must recognise realities, one must face the actual position and admit that it is much better that we should discontinue or dissolve such unions than that we should continue a misery for such parties.

The idea that these unions should be monogamous in character while they last is also one which in my opinion is the basis, is the foundational condition of a continued happiness, continued success of such unions. There may be occasions, however, when such unions as I have just said prove unbearable or intolerable by circumstances that neither party could foresee, but in that case, without too much fuss, without going into an operation that might involve washing of the dirty linen and mere playing to the gallery, so to say, by sensationalism, we might in our law devise machinery by which this union could be easily dissolved without unnecessary prejudice to any party. I do not see therefore that we need insist upon reasons or conditions or excuses that any other legal systems have been made necessary for granting divorce and I think it would be much better if divorce is made easy, simple and inexpensive, more than is at any rate, the case in some of the western countries whose model we have been following. The question of inheritance, the question of enjoying a share of the patrimony is again one which does not seem to me to be a just cause for the degree of heat that it seems to have evoked in this House. After all, in this country how many people are in a position to have property and leave such property outside beyond their life? If you go by standards, if you go by measurements such as that of the income-tax statistics, you will find that perhaps less than a million people are in a position to have an income of about Rs. 250 a month and that would include all people, not only those who are regarded as income-tax payers, but those who try or manage to escape that.

In a population of over 300 millions, the income tax paying class number about one million, or with their dependent about three to four millions and that is less than one percent of the total population who can possibly afford to have some property that can be divided or that can be the cause of disaffection or of inequality of rights as between the descendants of common parents. I see really no reason why on this subject any heat should be generated, as regards the recognition of equal rights of daughters and sons in the matter of division of patrimony. Speaking for myself, I may say, I do not believe in any property at all, and the sooner the day comes when property as a whole is abolished, when provision is made for everybody by the community, provision to see that everybody gets work and gets his or her wants or requirements met, the sooner that day comes the better for the community. And this source of evil, a learned lawyer called it the source of

strife, I call it this property which is the source of evil, I say that property should be abolished, and the sooner it is done the better it would be for the community and for legislations of this kind. If it were possible at this stage to suggest an amendment of the kind I like, I would even suggest that all clauses relating to property be abolished or deleted and a simple proposition be inserted, that while property continues, property of any kind, both land or personal, it shall be equally divided. That would be sufficient for the time being and we ought to endeavour that the day draws higher and higher when property as a whole will be abolished and everybody would have the same right to work, the same right to enjoy a given standard of life as those who are advantageously situated with patrimonies in their hands.

On these two crucial issues therefore, one of marriage and the other of inheritance, I say that the Bill goes no further than what conditions around us necessitate. If and while you maintain an individualistic society, if and while property remains to be the corner-stone of or the foundation of your social system, and the profit motive remains the governing impulse of the social machine, so long I see no reason why there should be inequality. The equality should not be merely nominal. Political equality, the right to vote would mean nothing so long as economic equality also is not assured to every human being, to every citizen of this country. One has heard a great deal and I was very glad to hear it all that in the essence of Indian civilisation, in the essence of our social system, the highest honour is paid to womanhood. If that is true—and I do not doubt it—then I do not see why mere sanction of equality in property should be excluded, if you are really so worshipful of womanhood, if you are so respectful and reverential to womanhood, why do you hesitate at all to give her equal right to what after all, is mundane property, that which must be left behind by every one of us. However much we may be attached to it, however much one may hold and accumulate property, I do hold and I say it with the utmost reverence and the utmost humility, that I consider that in the process of evolution, woman seems to be more highly evolved, a finer organism than man, it is not, however, any disparagement of either sex. All I say is that, given the function that nature seems to have entrusted to women, given also the function and the objects with which womanhood has to deal in this social system, we cannot revert, we cannot regard or respect womanhood too much, and as such I would not like the least sign of inequality, the least semblance of differentiation or invidious distinction between man and woman, as between son and daughter of the same parents.

The question, however, of adoption or of guardianship and so on, does not interest me to the extent that some Hon. Members of this House seem to be

interested in it. Adoption or for the matter of that, testamentary powers appear to be artificial extension of the human personality beyond death which is utterly unnatural, in my point of view. It is bad enough to have and hold and control property, it is bad enough to have and hold the property and the profit motive in our minds while we are alive. Why should we continue to prolong our personality? Why should we desire to insist upon our orders being obeyed even after death? Why should there be this artificial extension of personality by such an instrument as adoption? Knowing, however, that it is an ancient institution, knowing however, that it is an institution which many regard as a point or as a factor in their salvation, I am not prepared to suggest that here and now we should abolish it. I am prepared to say, if you regard it as a source of your salvation, if you regard it as something by which your personality is perpetuated, your civilisation or culture or work in life is continued, then it is necessary. But, in that case, you need not have inequality between man and woman. No discrimination or legal restriction between man and woman. The same right should be extended to every one in the community. I base my support of this Bill on grounds of social justice, economic equality and of political propriety. I should think that the Constitution that we have adopted, that the ideals that we have held before us, that the hopes that we have entertained of a planned and progressive society here after, in view of all that, I think we cannot do better than take this Bill as the beginning in the right direction. We cannot do better than recognise the provisions it has incorporated, regarding removing all inequalities as between man and woman. It is not merely a matter of recording every five years or every three years one's vote at the general election. It is also a matter relating to life and work, of equal opportunities to health and education of standard of life and the same fulfilment of the elementary wants of human beings, in the matter of food, shelter and clothing. These should be available, and should be made available if they are not available by the concerted and common action of our society as a whole. Society should realise this obligation that it is not merely a paper proposition that we have enunciated in our Constitution, but it is a sacred duty and obligation that ought to be discharged at the shortest measure of time that we can manage it, that all these things should be made available to every citizen of the country so that the hopes and aspirations that we have formed, so that the hopes that we have entertained ever since the freedom of this country was achieved, could be realised. It has been said by a very great American—President Lincoln, that a nation cannot be half slave and half free. While not exactly Slaves one half of this country, of our community still feel disabilities and weaknesses or invidious discrimination against them, which it does not wish, should be allowed to continue any

longer. In this connection may I mention a statistical fact which perhaps is not realised by every person in this House. It is this. While woman is in a majority at birth, on the overall population she is in a very striking minority. Whatever may be the conditions in a province like Utkal, on the whole, in India woman has always been in a minority almost beginning from the age when marriage begins, from about fifteen onwards, their numbers go on thinning so that in the over all population woman was and is still in a minority. What is the significance of that?

{At this stage Mr. Deputy-Speaker vacated the Chair, which was then occupied by Shri. S. V. Krishnamoorthy Rao (one of the Panel of Chairmen). }

I for one think, that is because of the unequal treatment given to women as between boy and girl, as between son and daughter that it has resulted in a majority at birth being reduced to a minority on the whole, so that that charges of unequal treatment must be faced. Here is a Bill which tries to remove that. There are many provisions in the Bill which may not satisfy everybody, even those who on principle accept the Bill, even those who realise that it goes a great way forward in rationalising our society, simplifying our legislation and organising our social system to a given end. But we are not discussing details just now. Specific provisions apart, the principle underlying the Bill, the motive spring of the entire structure should commend itself to the House and I trust the House will accept it.

Shri Lakshminarayan Sahu (Orissa : General) : *(English translation of the above speech)* I would like to say. Sir, that I did not mention this thing as a joke that there are more women in Utkal. The number of women in Utkal exceeds by three to four lakhs and when it is not possible to find out a match for their marriage, then they are married to a *Sahada* tree.

Prof. K. T. Shah: I am speaking of the whole country and not of any particular province. Therefore it is not necessary for me to answer this particular question. Let it be left there.

Sardar Hukam Singh (East Punjab Sikh) : Sir, at this late stage of the debate, I feel it is not very easy to advance fresh arguments or make new points on the subject on which so many distinguished lawyers and eminent scholars have taken part for so many days. But as I have been called as a representative of a particular community to which this Bill applies, I must say something which should represent the feelings of my community so far as this particular code is concerned.

I do not agree with my learned friend Prof. Shah when he said that he wants to speak only as an Indian. I would have gladly repeated the same phrase, had this code applied to every citizen of India but as it stands it

applies to certain communities only. Therefore I feel and believe that I have a right and a duty to speak on behalf of my community.

Though I have the advantage of having heard so many scholars at the same time I feel I have certain disadvantages as well because most of the things have been said and if I repeat them they would look stale. I have, therefore, decided to confine myself to certain points only which particularly concern my community and on which I feel that I have to express my views.

At the outset I might make it clear that I do not want society to stagnate. I am not one of those who would say that social laws should remain as they are, I would like to change them as times change. I am not so orthodox as to say that we have no right to march with the times. Nor am I of the opinion that this House is not competent to enact this legislation on account of its being elected indirectly or on account of lack of a special mandate as regards this Bill or on account of any other reason, I feel that this House is competent to enact any legislation and hence this Bill also is within its competence. In spite of all this, I feel that I cannot lend my wholehearted support to this measure as it stands.

If the original scheme had been adhered to as suggested by the Rau Committee, perhaps certain portions of this Code might have been passed without opposition. There must be unanimity on certain branches of this Code. But I will confine myself to certain points only and therefore I do not want to touch on all aspects of the general principles of the legislation.

The Preamble says that the Bill is intended to amend and codify certain branches of the Hindu law as now in force. But when I look into the Bill, I find that there is nothing of Hindu law that is being codified here. Divorce is being taken from the Christian countries and the law of inheritance from Muslim law. To me it is rather a misnomer to call it a codification of Hindu law.

Dr. Mono Mohon Das (West Bengal : General): There are so many castes and tribes in the country among whom the divorce custom is prevalent . Are they not Hindus? Does the hon. Member want to get rid of them?

Sardar Hukam Singh : If you will permit me, I will come to that question later. I hope you will have the patience to hear me.

As I said I will confine myself only to certain points so far as my community is concerned and will not go beyond them. In the Preamble, it is said, that the Bill is intended to amend and codify the Hindu law and I repeat that I do not find that in this Code. If as we were told by the Mover at the outset that 90 percent of the people have divorce, I have no objection and let them remain as they are. You might call that Hindu law but not this system you are introducing in this Code.

In clause 2, it is said that this Bill applies to Sikhs as well. It would have

been a matter of gratification or even of much pride to us, if Sikhs had been included among Hindus for the conferment of certain rights. But what I find here is that as soon as the embrace is extended in clause 2 a severe blow is dealt to all customs and usages by clause 4. All custom is gone and usages eliminated. I must submit here that " custom " in clause 3 has been defined as " having been continuously and uniformly observed " and that it must be " certain and not unreasonable nor opposed to public policy ". Why should such a sacred rule of conduct be treated with such contempt that it should be ruled over once for all? I have grave objection to that. My objection is particularly based on this fact that my Province, namely the Punjab, is a Province where custom is the first rule of law. In all matters like divorce, marriage, succession, inheritance, wills etc. custom is the first rule as is laid down in the Punjab Laws Act. They have those customs which they observe from a long time and everybody in the village understands what that rule is which he is to observe. There have been judicial pronouncements on these customs and they are ordinarily understood by every villager. There is no dispute about that, Therefore, I feel that this change would bring about a fresh phraseology and would create complications for simple peasants who have all along understood their laws well.

My second objection is about marriage. I might make one observation here. It might be said that the Sikhs have all along been governed by Hindu law up to now. But what I object to is the change that is being brought about. I have no objection absolutely if the Hindu Law were to continue as it is. But as the changes are being brought from outside, I feel the Sikhs must have a grievance and feel that either customs should be allowed to remain as they are or they should not necessarily be bound to revolve round the wheel as it goes on. I was referring to the marriage question. Of course I feel that in Hindu law or in Hindu culture the wife has so long been advised to merge herself into the will of the husband. She has been an embodiment of sacrifice. That has been her nobility and greatness. If now our females feel that they have been subjugated for so long a time, that they have suffered and that they are not prepared now to continue to suffer, I would certainly advise my brothers to take up the subordinate position. But I feel that this insistence on equality in every matter and in home life would not be conducive to happiness or peace in the family.

Then again my complaint is that only two kinds of marriages have been recognised in this Bill. One is the sacramental form and the other is the civil form. I must inform the House, though I believe, most of the Members would be knowing it already, that the Sikhs have another form of marriage which they have observed for the last one hundred years. That is called Anand

marriage ceremony. That is a simple form. The couple are brought before the Gum Granth Saheb, they take a vow and go four times round the Granth Saheb, then offer prayer and then the marriage is complete. Now, it is not civil marriage because it has not to be registered anywhere. It is not sacramental marriage because the *sapinda* relationship or the restrictions of prohibited relationship degrees are not adhered to strictly. Therefore what I am afraid of is that this form of marriage that we have been observing for so long would not be a valid marriage. Doubts arose in the beginning of this century and then a particular Act had to be passed in 1909—the Anand Marriage Validating Act—when it was enacted that all marriages solemnised according to this form were valid. But now, as I read it, I am doubtful whether this marriage will be recognised under the Hindu Code. Therefore, I feel that the Sikhs would feel much concerned over this and would have grave apprehensions over this matter particularly. I want to bring it to the particular notice of the Mover that, left to themselves, they are not prepared to forego this form of marriage and he should take particular note of this.

Mr. Naziruddin Ahmad (West Bengal Muslim) : Such a marriage would be invalid under this Bill.

Sardar Hukam Singh: I also feel that it would be invalid under this Bill and that is why I am submitting the position before the House and before the Mover particularly.

Then I have to submit one observation about divorce. It has been said that divorce is already there among a large percentage of the population. It may be. My appeal is this. If it is there let it go on. Do not restrict it with certain conditions that would make it more expensive. An ordinary man would feel that this change is not for the better but for the worse. If they have an easy mode of dissolution of marriage now and are hereafter being compelled to resort to some more complicated and more expensive method, certainly they would not welcome it. It is argued that there are evils creeping. The bill is a permissive one. That there is no compulsion for anybody, but we have to be on our guard whether the remedy proposed is not worse than the malady itself. There are evils no doubt to a certain extent. But if we loosen the bonds, a small percentage of the population would be happy to break all ties and secure relief from their self-created miseries. But what about the large minority? Would you not be opening a trap for them, and a temptation to make mistakes, and have a trial of their future as they will realise that there is a way out to end it?

Then I come to my second main point and that is about adoption. Adoption in my province, that is the Punjab, is a peculiar institution. It is called the customary appointment of an heir. It has nothing to do with religion. It is a

simple declaration for practical purposes, where the owner of a land nominates a person who is to be his assistant for cultivation during his lifetime and an heir to his farm after his death. As I have said, it has nothing to do with religion. There is no restriction as to age or as to relationship. You are now proposing in this Code that a daughter's son or a sister's son may be adopted but I must convey to you that already in the customary appointment of an heir daughter's sons are most ordinarily appointed, sister's sons also are appointed. There are absolutely no restrictions. A young man can adopt a man of his father's age, a man with many sons might be appointed as an heir. That might look strange to some people here but I tell you that it is a fact. A married man, a man with children might be appointed an heir. That is a most secular institution; it has got nothing to do with religion. How are you going to provide for such an institution? Are you going to throw it out? Surely that has the sanctity and sensation of ages, it is so popular in our part of the country that it cannot be thrown away like that. People would not submit to it so easily and so far as this part of the law is concerned, it would be a dead letter if it is pressed and forced on our people there.

Then there is the question of succession. I agree with my friends that our females, sisters and daughters, should have a share in the property, but I cut it short by saying that I agree with my learned friend Dr. Bakshi Tek Chand when he enunciated some time ago that they should have a share in the father-in law's property and not in the father's property after marriage. I have particular reasons for that because as I have stated the circumstances of my province are very peculiar. The Punjab is a province of small peasants; small farms of three or four acres are the ordinary holdings. Such a person cannot be expected to have more than two bullocks which he might have secured after raising some loan, one *hal* and one *panjali* and one *gadda* also to take manure to the field or to bring fodder from the fields to his house. The Code would not apply to agricultural land, but what about the movable? What about his bullocks? Take the simple case of a family with one son and one daughter. The father dies, these movables are to be divided among these two. (*An Honourable Member : Why not?*) I don't say that, I say it must be divided. Ordinarily they would have a cow as well and I think the Mover would have to give us the mode of dividing that cow, *hal* and *panjali*. The son-in law who comes from a distance, of say fifty miles, is interested in that part of the country; here he cannot live with this brother-in-law because the four acres holding cannot provide him with anything. His interest is elsewhere and therefore he must divide the property and go away. The sister would demand her share; surely she will take away one bullock, one half of the cart, one half of the *panjali* and would go away never to come back, thanking the framers of

this Code, and of course not to be welcomed again ! (*An Honourable Member*: The brother's own brother-in-law will thank him !). That is a very easy question that is put, but it is not realised that when there are more than one—two, three or four—brothers in the East Punjab, they join the army, they are adventurers, they have gone to the farthest comers of the world to Argentine, Brazil and South America. They bring money from there and buy more lands, they live together with a common kitchen.

Sir, my submission is that this provision would create difficulties. I agree with my learned friend Dr. Bakshi Tek Chand that so long as the daughter is unmarried she must have a share in her father's property, but as soon as she is married she must be transferred to her father-in-law's, there to have an equal share with right of partition and everything else. I am not against giving a share to the females— I might not be misunderstood in that respect.

I am afraid that our educated girls have much leisure. An ordinary girl, when she gets educated, does not absorb herself in the household duties, therefore she has not enough work to keep her busy in the house.

[*At this stage, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) resumed the Chair.*]

The State should provide occupation for their leisure hours, give them useful and constructive work to do. Legislation like this and divorces would not root out the evils that you want to eradicate. Before destroying the joint family, the State must provide for old-age maintenance, illness allowance and several other things. If the pious duty is gone a mere charge on property would not do. The effects of this legislation, so far as I can think out, will be further fragmentation, love and sympathy, eliminated divorce and partition courts in larger numbers, female infanticide promoted, and care and attention of children neglected.

Shri V. I. Muniswamy Pillay rose—

Shri B. Das (Orissa: General): Sir, are we continuing till 7 O'clock..

Mr. Deputy Speaker: I have no objection to sit till 7 o'clock. What is the general sense of the House?

Some Honourable Members: No, no.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, we can sit as long as there is a quorum.

Some Honourable Members: No, no.

Mr. Deputy Speaker : I have heard sufficiently. One voice cannot multiply itself into many. How long is the hon. Member likely to take?

Shri V. I. Muniswamy Pillay (Madras : General) : About fifteen minutes.

Shri L. Krishnaswami Bharathi: Sir, the idea is to give opportunities to as many Members as would want to speak. It is rather surprising that people

don't want to speak. I suggest that we sit as long as people are ready to speak and we are here to hear and when there is no quorum we will automatically stop.

Shrimati Purnima Banerji (U. P. General): The argument forwarded by hon. Members is that many members want to speak on such an important measure as the Hindu Code. When there are so many of us who are willing to say what we want to say and can be accommodated what is the objection to sitting till seven?

Mr. Deputy Speaker : I entirely agree. If majority of the members are willing to sit and speak I have no objection.

Some Honourable Members: Yes, we are willing.

Mr. Deputy Speaker: Very Well. Let Mr. Munishwamy Pillay finish. We will see.

Shri V.I. Muniswamy Pillay : Coming as I do from a community that was at the outside of the Hindu Society for centuries, I welcome this measure of religious and social reform. We, who form one-sixth of the population of India, welcomed the advent of Mahatma Gandhi who revolutionised the Hindu society so that not only Caste Hindus but all sections of the Hindus could have an equal place. Some of the friends who preceded me said that religion was in danger. I do not know wherefrom and in what from their objection springs. This country is proud of many *Avatars*—Lord Buddha, Sankara, Ramanuja— and great social reformers like Ram Mohan Roy and in the present century, the great Mahatma Gandhi who found that untouchability was eating into the very vitals of our nation and himself showed the way for inter-caste marriage. All these reforms show that we are in line with the present age. Whenever any social reform came up before the legislatures, obstructions were placed in the way, so that reforms may not come about. Coming from Madras. I may inform this House what kind of trouble we had when the Temple Entry scheme was before the Madras Legislature. Even in the matter of removal of social disabilities of untouchables, the Ministers had to find themselves in the midst of people who threw chilly powder in their face. Such is the state of affairs when we bring social reform in this country. The great Sankara who brought *Advaitism* to our land, when he was asked by his Guru " Who are you? " he said:

These were the words uttered by the great Sankara. He never differentiated man from man, woman from woman. He thought every one was equal. I do not understand why there should be so much opposition to this Bill. In the South the great philosopher. Thiruvalluvar has given to the world tenets as to how a man and woman should move; what are the conditions under which they should live. They are pearls. I do not understand why there

should be objection to the woman getting equal share in all amenities that are given by God to the human beings.

Some of the members who preceded me said that the time is not opportune. This measure has been before the country ever since the resolution of the Central Assembly was adopted on 20th January 1944. This Hindu Code has reached the nook and corner of India and not only educated men but the masses in general have understood the theme of this legislation. I do not know whether such members, as told the House that it is not competent to deal with this Bill, are talking with a sense of their responsibility to the country. I do not know whether members of this Assembly who have the proud privilege to produce a Constitution for thirty crores of people, which has been welcomed not only in India but in foreign countries, are not competent to deal with this Bill for the uplift of women in this country. We have clearly laid down in the Fundamental Right of the Constitution that the State shall not discriminate on grounds only of " religion, caste, sex....". We have got again Article 15 (3) which says that " Nothing in this Article shall prevent the State from making any special provision for women and children." Again in Article 46, it is stated: " The State shall promote with special care the educational and economic interests of the weaker sections of the people" do not women come under this category , and ought they not to be protected? After all, this legislation is a permissible one and ought to be welcomed by everybody.

If you study the rules regarding marriage, inheritance, adoption and all these things of Hindus in the different provinces, you will find that they are not the same. They differ in many places. In the Constitution we have said that we must evolve a common Civil Code. This legislation is, in my opinion, the forerunner before we come to that stage. I come from a district where there are a lot of hill tribes. Their marriage ceremonies, laws of inheritance etc. differ substantially from those of Hindus, although they profess to be Hindus. Among the picturesque *Toda* aboriginal community, there is polygamy and due to this social evil the community is dwindling. The ceremonials of the other tribal community of *Badagas* also differ from those of Hindus, although they profess to be Hindus. The custom among them is that when a man wants to marry a girl, he has to pay dowry— what they call *Thiraipanam*. After that, if the woman wants to go away from the husband and if another man were to, pay the same dowry i. e., *Thiraipanam*, the woman is free to choose another man.

In a land which has produced great saints and sages are we to continue these things? Whether it is the tribals or hill tribes they all have to be protected according to the New Constitution.

Sir, in Madras province, as has already been observed by some of my hon. friends, polygamy has been statutorily abolished. Now, unless we codify the law for the whole country, it is open to a man to leave Madras, get married in some other province and return to Madras. Unless there is a uniformity in regard to the law obtaining in all the provinces, it is not possible for the Madras province alone to have this law enforced.

The other cardinal points of the Hindu Code Bill which is now before the House are the chapters relating to marriage and divorce. It has already been pointed out how essential it is to have both civil and sacramental marriage. According to this, the Scheduled Castes find that the *yogam* must be performed and the ordinary *thali* tied. Then only does the marriage become true. Even now after the Civil Marriage Acts have come into force, I find people taking to this. I can find no reason why the same method cannot be adopted throughout and for all Hindus, orthodox or otherwise.

Clause 33(f) makes reference to "adultery". I wish that the word "adultery" had not been used at all in the Code, for, as was pointed out by Swami Vivekananda, so long as there live three women in our land the chastity of India will be upheld. I do not think Sir, that adultery is largely prevalent in any section of the Hindu society. There may, of course, be rare cases. But there is no reason why that should necessitate a statutory provision.

In sub-clause (2) of clause 9 and clause 16, I find penalties in regard to people breaking the law. The amount specified is too high, particularly for the poorer section of the people. I feel that it must be a very nominal amount. In the matter of judicial separation it is all right in the case of people who have got money and can afford to go to the courts to get a dissolution. But what about the villages in which India abounds. Communal panchayats consisting of members chosen by a few people will decide the matter, I do not think this procedure is correct. I think some formula must be evolved which will lead to the constitution of representative panchayats which will decide cases of dissolution.

Next I come to the question of *stridhana*, that is what is given to the women either by her father or by her brothers. What is to happen

if it is not properly used by the husband. I feel Sir, that some clause must be inserted so that the *stridhana* may always remain the property of the woman.

Clause 72 which deals with adoption says: "No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such and return to the family of his birth." I think, Sir, if the son or anybody who is adopted were to misbehave and squander the money of the family, there must be a saving

clause whereby such a thing could be prevented.

Section 93 deals with the dowry to be held in trust for wife and says that it shall come into force after the commencement of this Code. I feel, Sir, that section must apply to all cases existing before the commencement of the Code.

Sir, I would finally point out that bringing this Hindu Code into force will greatly relieve all those women who are under the harsh treatment of men. Many people have been saying that the women are enjoying equal privileges and facilities. But in reality it is not so. In a few cases it may be so. But about 90 percent of the women are still suffering from many social hardships. Out of the four *yugas*, *Krita*, *Treta*, *Dvapara* and *Kali*, we are now in the fourth *yugam*, iron age and are strong to bring in reforms. We must see that the women enjoy as many facilities as men. It is said that the hand that rock the cradle shall win the world. Before they grasp forcibly these facilities let us give them peacefully. I, therefore, support the Hindu Code Bill that has been brought by this Government and when it has come into fruition I might say that my hon. friend Dr. Ambedkar who has taken so much of trouble would have added a further feather to his hat.

Shri O. V. Alagesan (Madras : General) : Sir, yesterday Dr. Ambedkar said that he was very glad that it had fallen to his lot to pilot this Bill. Sir, his name is sure to go down in history as the able midwife that assisted at the birth of the Constitution of free India. Sir, he is ambitious. He wants to add a further feather to his cap and he is justified. His ambition is to supersede the ancient rishis, Manu, Yajnavalkya and a host of other ancient law givers.

One of the previous speakers— I think it is Mr. Pataskar—made a reference to Section 44 of the New Constitution which relates to a uniform civil code for the whole country. He pleaded and asked: " Why not withdraw this Hindu Code and have a Civil Code? It may sound like pleading for postponing the day of mischief. But why does not Government come out with a statement of policy on this question? Is this a first step in that direction? Would they bring in more measures to put into effect Article 44 of the Constitution following this? I do not want to embarrass the Government, but all the same I would appreciate a clear statement of policy from the Government.

Sir, the other day it delighted everyone's heart to hear the hon. Mr. Santhanam pleading for monogamy. He challenged anybody to raise his little finger against this institution. Saint Tyagaraja admirably summed up Rama's character in his own inimitable manner in these words:

Oka mata, oka banam, oka pathni That is One word, one arrow and one wife. We are all glad that that ideal has been placed before us. Sir, I ask, is it

good only for the Hindus? Will the Government bring forward a Bill common to all and make monogamy applicable to all citizens of India ? I say this not to embarrass Government. I would like to repeat. When it is put in this manner, you will have to put the problem in its proper bearing. You will remember that there is a community in India which will object to it on grounds of religion and you will also remember the unhappy happenings that followed the partition in this country. You will be saying that it will be an interference with religion, that it will be against the secular nature of the State. Now the Prime Minister has declared that our State is going to be a secular one. We should educate the people on the secular nature of the State. There are many things that are happening on the other side of the border which are sure to have their reactions on this side. That State is based shamefacedly on a theocratic basis and they propose to carry the full implications of that policy and such a policy on the other side cannot fail to have its reactions on this side. So, people begin to entertain misgivings about the secular nature of our State. They understand it in this light and there is good reason for that, that secularism means meddling with everything Hindu, and fighting shy of any other group. That is the way in which the general mass of the people in this country react to measures like this.

So in the interests of the secular State that we want to establish in this country, we should try to carry the people also with us. It is no good Government alone saying that we are a secular State, and if that is not properly understood, properly appreciated by the general mass of the people in the country, then the State cannot long continue to be secular. We will be losing the ideal that we want to realise in this country and we will be postponing the day of such realisation. That is why. Sir, I say that people are at present not in a proper mood. They are sullen. They are in a pique; just as a child which is in a pique refuses to eat even the sweetest thing, people are not in a mood to appreciate this reform. Even though it may contain some good parts. So the best thing would be not to press down the throats of the people anything which they do not want. Dr. Ambedkar last time quoted Burke. He struck a gloomy note and gave us a warning just as he did at the conclusion of his speech during the third reading of the Constitution He said:

" Anybody who wants to conserve should be prepared to repair." It is very good. Sir, we should be prepared to repair, but does this Bill represent mere repair? I should say it pulls down the house in which we have been living. It wants to plan a new structure. It wants to make structural alterations. It is not mere carrying out repairs here and there. It is a structural repair. I should say that it is a new structure that it wants to put in the place of the old one.

The Honourable Dr. B. R. Ambedkar: All repair is structural repair.

Shri O.V. Alagesan: I have no objection to carry out even structural repairs, but before carrying out such structural repairs, this House itself should undergo a structural repair. That is what I want to say. By saying this, I do not minimise even by an iota the representative and sovereign character of this House. Sir, when we put through other legislation—Prof. Shah was labouring this point—nobody is surprised. It is a routine matter, but this is treated on a different basis. This is viewed with suspicion, with anger. That is the reason why I say we should discriminate, and allow the House that will have been structurally repaired to carry out this reform with greater confidence and with a degree of success which can be attained by then.

Sir, another point is the atmosphere in which this Bill is sought to be pushed through. Sir, there was a great one in this country who led our thought and action. Even though we were slaves he taught us to think and act like free men and we followed him. That was the tradition that he established. Long before this country was technically free, he ushered in an atmosphere of free thinking and action. But unfortunately, he is no more with us to guide us, but his example is there for us to follow. Even on a matter like the abolition of untouchability, temple entry and such allied matters, he advised that we should not accomplish those worthy objectives by means of legislation. He persuaded and preached to the people the necessity for such measures. He even imposed suffering on himself. That is how he brought about this mighty reform and it has become an established fact today. It is that way that we should follow and not force down reforms upon the throats of unwilling people.

Shri V. I. Muniswamy Pillay: It is for you to educate them.

Shri O. V. Alagesan : We should go about the country and educate the people. The general elections are coming very shortly and that will be the best time for it.

Shrimati G. Durgabai (Madras: General) : That is the whole fear.

Shri O. V. Alagesan : That will be a wonderful opportunity to educate the people on the various provisions contained in this Bill. There is much force in what the Congress President said yesterday. The Labour Government in Britain, how does it function? It has postponed a very important measure, a Bill for which they took the permission of the electorate. It had the sanction of the electorate but after taking note of the situation in the country, they have postponed it till after the general election. They are going to take the verdict of the people afresh and then push through the measure. When such is the case in regard to a matter on which the permission, the sanction of the electorate had been obtained, then I should think it is much more necessary in this case where we did not give even an inkling of our ideas to the electorate. Sir, we

have seen the spectacle of this Bill being debated for two days in every session. It is like the promise for renewing the gold bangles for the next deepavali. That is how we have been going on and it is good that we go on like this, because, who knows even the sisters who have given their enthusiastic support to this Bill may change their minds tomorrow and they may try to improve it on their own lines. After all one does not remain static and more so woman.

Shrimati G. Durgabai : There are also some men who change their opinions.

Shri O.V. Alagesan: The great poet Valmiki who is the Adikavi of our country said this. The reference is only to the general characteristics of women. This does not apply to anybody in particular. Valmiki said :

Sathahvadhanam lolathram That is :Women hange as lighting. That is what he said.

Similarly they can change their minds and try to improve. I should like to ask you and the House whether they have not gained by waiting so far. They have gained because in the Rau Committee recommendations, the daughters had only half a share and now according to Dr. Ambedkar's Bill, daughters will be getting equal shares with the sons.

Again Sir, if they wait, they may get more. Daughters may get two times. Also we have heard on the first day the hon. Mr. A K. Menon. The other day in a different place we heard Mr. Thanu Pillai., They are very anxious about this and they feel that they are being pushed back instead of being pushed forward. While the rest of India is pushed forward, the Malabaries very strongly feel that they are being pushed backward under this Bill. Sir, they may convince others and the whole land may come under Marumakkattayam, though the matriarchal system is disappearing elsewhere. Our friends from Malabar may be able to convince the other hon. Members of this House and then the whole thing may be Marumakkattayam and that will be a brighter prospect. They will not lose anything by waiting because they have got persuasive powers; they can persuade, they can seduce, they can manage all these things.

Mr. Deputy Speaker: The hon. Member need not use that expression.

Shri O. V. Alagesan : I am sorry. I withdraw the word. We witnessed the wonderful spectacle in this House, Sir, of a speech which began as a wonderful satire and ended in a sorrowful sermon. Overnight the satire was converted into a sermon. So when we see this, nothing is impossible. It can be improved even according to the protagonists of this Bill in a very radical way and they may have a better Bill if they wait and then they can have the satisfaction of having taken the permission of the country also for that.

Sir, I should like to put another point of view. What is the approach that this Bill makes towards the problem? The approach is that inequality exists in the Hindu society between man and woman. I should very respectfully submit that this conception of inequality between man and woman is a biblical conception. The Hindu conception is that of *Ardhanareeswara*, that is of man and woman being equal. That is our conception. Sir, that is the basic Hindu conception. I do not say that it has been entirely translated into practice and I do not make that claim, but that is the basic conception of Hinduism. The conception is not one of inequality, but it is one of dissimilarity. If man represents strength woman represents endurance; if man represents intellect woman represents enlightenment; if man represents grammar, woman represents poetry. The great poet Kalidasa has described Parvati and Parameshwara as word and meaning and that is the basic approach. You do a basic wrong when you approach this question from the point of inequality between man and woman.

Again Sir, I should like to point out that the present atmosphere is not a free atmosphere because we have never examined our institutions as an independent nation, especially on this subject. It is not Yagnavalkya or Manu that is so much current as the British courts and we have never had an opportunity to examine our Indian institutions with a dispassionate and an unbiased open mind. Always the bias of western ideas and western notions had been there. Though our political slavery have been removed, still the spell of western civilization and ideas continues. So, it is better if some time elapses and we may be able to view and examine both the good and bad points in our institutions in an independent way, in a fresh way and that will give us an opportunity to mend this Bill and even improve.

Sir, another reason behind this Bill is a sense of injustice done by man to woman. I do not want to repeat all the things that have been said before, both in humour and seriousness, but. Sir, I can claim that there has been no injustice done to woman by man. I should like to say that it is only a mental aberration of high strung natures due to unattached circumstances which enable one to do anything except lead a normal life. That is how I would put it. In this land nothing has been done by man to wrong woman. I should like to examine some of the arguments put forward by the other side. Sir, I find a growing practice among the occupants of the Treasury Benches.

When a bill is generally debated, they say some people have opposed and others have supported and hence this Bill represents the largest common measure of agreement. That is a very easy way of disposing— and I do not think the learned Minister in charge of this Bill will do it and I have no doubt about it. It is not the largest common measure, but the least common

measure, I would say.

Then, Sir, it is said that opposition to this bill is based on prejudice and sentiment and not on reason. I should like to point out that support is also based on the same blindness, on the same prejudice and on the same unreason. It is not as if support is enlightened and only opposition is ignorant.

Again, Sir, it is said in support of this measure that this is only an enabling and permissive measure. It was said in another place that the orthodox can go on in the old way without interference and the reformers also may go their own way or it permits such of those who want to take advantage of the provisions of the Bill to tread their path and leave others entirely free to pursue their own path. I think Dr. Ambedkar said it. Sir, this is like enacting a general law of licence and saying that such of those who want to take advantage of it can do so. The plea that it is only a permissive and a enabling measure, in my opinion cannot hold water. Then it is said that there has been opposition in the past to Bills of similar nature like the Sarda Act. This stands on an entirely different footing. There is difference between that Act and this Bill.

Dr. Tek Chand was saying that this Bill has been before the country for a very long time and so we need not wait any more. It is true that the Bill has been before the country for a number of years. But then the Congress was not in office and so nobody took it seriously. As soon as the Congress came into office and Dr. Ambedkar piloted this Bill as a Minister of the Congress Party, then everybody took it seriously, and they now know that it will be put into force, and that is why, I say, the people should be given an opportunity to examine this Bill. There is difference between the position that it occupied so far and the position that it occupies now.

Sir, It is also said that many women who are opposed to this Bill, do so under the influence of their men-folk. This, I think, is an unfounded charge. May I ask whether the women who support this Bill are displeased with their husbands ? Or, may I ask whether the man who supports this Bill do so under the influence of their womenfolk ? It is no use putting forth such frivolous arguments.

Shri B. Das: There is nobody here to answer these questions.

Shrimati G. Durgabai: Can you say that they are pleased with their husbands when they marry again and again ?

Shri O. V. Alagesan: I am coming to that Madam, please have a little patience.

Shrimati G. Durgabai: Please answer that question first.

Shri O. V. Alagesan : Yes, I will, in my own time and in my own way.

Pandit Govind Malaviya : May I know till what time we intend sitting ?

Some Honourable Members : Six o'clock.

Some Honourable Members: Seven o'clock.

Mr. Deputy Speaker : I am finding the House getting thinner, and thinner, and when it is quite thin I will get up.

Sjt. Rohini Kumar Chaudhari: Let us rise for tea, now Sir.

Mr. Deputy Speaker: No, the hon. Member will finish soon.

Shri O. V. Alagesan : Sir, the justification for a measure of this kind can be two-fold. There should be a conscious demand from the public for such a measure; or a few people, who have set their hearts upon a measure of reform, may think that it is good for the entire community, while the community may not be conscious of the goodness of it. Then it is the duty of those, who think that such a measure of reform is beneficial to the whole community, to go and educate the people about the soundness of their stand. I only plead that the people who bring forward this measure and who believe that this is a measure beneficial to Hindu society, that they should go and educate the people. I do not want anything more from the protagonists of this Bill.

Shrimati G. Durgabai: They have done it.

Shri O. V. Alagesan: My sister here says that they have done it already, but I should like to point out that the claim made by these reformer friends, this microscopic minority, that may speak on behalf of the majority of the Hindus, is the tallest claim ever made. They should have patience, and as I have pointed out earlier, they should educate the people about the goodness of this Bill, and not rush it through to have some satisfaction.

Another important thing I wish to point out is this. If this Bill is rushed and passed into an Act, then portions of it will remain a dead letter just as the Widow Remarriage Act has remained a dead letter though enacted a century ago. So if you do not want it to remain a dead letter, but that it should be taken advantage of by the members of the community then it is better to wait and educate the people.

Now I would like to pass on to a few of the important observations made by Dr. Ambedkar. This Bill seems to be a Law of Exceptions. Dr. Ambedkar said that the coparcenary system allows ten categories of property to remain outside the purview of the coparcenary. They form private property. So he says, because it has granted so many exceptions, let it, once and for all, go. That is one of the points that he has made. And then he says, woman has absolute right to *Stridhana* and so let it be so for all property. And also that this coparcenary system has the seeds of disruption in itself, and so let the joint family go. I would ask him; he has just now passed the Constitution and the various provisions in the Constitution, as you know, are riddled with

provisos and exceptions. For that reason, are we to make the exceptions into the main articles? When you look into the pleadings, it looks as if one has to make the exceptions into the main law.

Then again. Sir, this Bill about which my sisters are so enamoured.....

Shrimati G. Durgabai: Brothers also.

Shri O. V. Alagesan: This Bill does not in my opinion deserve it. Monogamy has been praised by one and all. It is not such a new institution. Women have been having monogamy in this land. but were there divorces provided? As soon as men are brought, within this law of monogamy there is demand for provision for divorce. As long as woman was under monogamy, there was no provision for divorce, but now they say divorce is the natural corollary of monogamy. Why are my sisters so very enthusiastic about it? What is the meaning of it? If divorce is the natural corollary of monogamy, how is it that this natural corollary did not come into existence so far?

Mr. Deputy Speaker: How long further will the hon. Member go on?

Shri O. V. Alagesan: Only ten more minutes, but I shall try to cut short. So I say it is not a very pleasant thing to be given the right to divorce. I do not want to read out extracts, but many women have pointed out that this divorce would work greater havoc for women than for men.

Shri A. Thanu Pillai : Is the hon. Member advocating monogamy without divorce?

Shri O. V. Alagesan : I want monogamy without provision for divorce. Sir, what this bill gives with one hand it takes away by the other.

Dr. Ambedkar, in justifying the provision for divorce, has enumerated the difficulties that the women who are deserted by their husbands nowadays are made to undergo. All these difficulties the divorced women will have to undergo. The prospect for the divorced woman is as bleak as the prospect is today for the deserted woman. It is easier for the divorced man to marry again and it will not be as easy for the divorced woman.

Dr. P. Subbarayan (Madras: General): So you want a double standard.

Shri O. V. Alagesan : I want my sisters to make note of it and beware of the pit to which it leads them.

Even on other grounds I would very seriously object to the provision of divorce. What is the experience of other countries? This has been touched on by other speakers and I do not want to enlarge on it. Recently we were told that the number of divorced cases in Paris alone increased from 600 to 1200, which is only 100 percent increase.

An Honourable Member : There is no Paris in India .

Shri O. V. Alagesan: I am glad there is no Paris in India just now but I am afraid the Bill tries to usher in Paris in India.

Shri L. Krishnaswami Bharathi : Baroda is there and Malabar is there.

Shri O. V. Alagesan : In one of the most advanced countries in the world, Soviet Russia, the family as an institution is breaking up. Soviet Russia is hard put to resuscitating the family as an institution, having allowed easy divorce. They now want to inculcate the sacredness of the family as an institution and infuse communist morality into their citizens. They are trying hard to save this institution which they have lost by lightly introducing divorce in their land. One had only to write a postcard to the Registrar saying that he is divorcing his wife and he had his divorce. I understand that they have now made their divorce laws more difficult. There is an example before us.

Shri L. Krishnaswami Bharathi : What about Malabar? Why go to Russia and Paris?

Shri O. V. Alagesan : There they have tried this method and found it dangerous. Why put ourselves in the same situation and again try to remove it ? Our Indian homes today are poor, steeped in ignorance and ill-health, but it cannot be said that our homes are broken ones. In other countries they may be rich, healthy and very enlightened but one is sorry to note that many of the homes in other countries are broken ones and that is entirely due to the license given in their divorce provisions. That is my opinion.

Such an eminent person like Dr. Tek Chand said that the joint Hindu family should be kept and wife be made a coparcener in the family. I should like to say that the real economic independence of women would come not by giving a share to the daughter, to which I have no objection, but by giving her an equal share in the husband's property. That is how she will attain her economic independence. It is not by taking a share from the father's property. After all the daughter is a trust to be given away to the son-in-law. The father keeps the girl as a trust and it is therefore better and more proper that she is made a joint owner or equal sharer in the husband's property rather than made to claim a share in the father's property. She may claim a share in the father's property if she remains unmarried.

I do not want to dilate further but I should like to end on this note. The chief man who conceived the Code (though a gentleman found it difficult to conceive yesterday) was Mr. B. N. Rau and we may be sure that he is very anxious about this Bill. He would want to see all his proposals, though in a modified form to be put into effect as early as possible and I should like to read his opinion, which has also been the opinion of the Hindu Law Committee.....

Shrimati G. Durgabai : There was a select committee to consider those proposals; not he alone.

Shri O. V. Alagesan : The Hindu Law Committee has stated as follows:

" The aim should be as far as possible to arrive at agreed solutions and to avoid anything likely to arouse acrimonious controversy. This need not mean any real slowing down of the pace of reform, for true reform proceeds by persuasion rather than coercion. "

Sir, I have done.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Thursday, the 15th December, 1949.

HINDU CODE—*contd.*

Mr. Speaker : The motion that the House was considering was: " That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration."

The Honourable Shri Jawaharlal Nehru (Prime Minister) : Sir I crave your leave and the indulgence of the House to make a statement in regard to the Hindu code Bill and I trust that the Statement I make will meet the approval of the House.

When at the commencement of this Session, I referred in the course of my remarks to the Hindu Code Bill, I said that Government attached a great deal of importance to this measure and they hoped that this consideration stage would be passed during this session. At the same time Government were very well aware that there was a variety of opinion on this subject and a large number of people were interested in the provisions of this Bill. And, therefore, I had suggested then that we propose to follow a course which we hoped would lead to a broad based agreement in regard to a number of controversial clauses in the Bill. I should like now to amplify that statement and to make clear the policy of Government in regard to this matter. We have had fairly prolonged debate on this Bill, not only in this session but in previous sessions. We had set aside two days on this occasion and as the House knows, those days have been prolonged on two occasions. Government had no desire and have no desire to restrict debate on an important measure of this kind and in spite of the fact that we have been very hard pressed for time—and we have very important legislative measures awaiting disposal during this session—we extended the debate on two occasions and indeed to day was also fixed for it.

While we have no such desire to restrict this debate, naturally Government is hard put to it to find more and more time, still we are prepared to find more time because of the importance of the measure and the desire of some Members of the House. But there was another aspect to this question and that was this; that if we are going to consider this matter in a spirit of trying to find an agreement as far as possible, in regard to controversial clauses, if, as

I said we are going to proceed on the lines I indicated right at the commencement, then it is desirable for us at this stage to carry on this debate and perhaps produce an atmosphere, or help in producing an atmosphere, which does not lead easily to that kind of settlement? That was an important consideration which Government had in mind. Right at the commencement, as I have reminded the House, we had that in view. It was no intention of the government to proceed with this merely by virtue of a majority and complete acceptance of every clause of this Bill although there might be considerable variety of opinion in regard to it. The position of Government, so far as this bill is concerned is this. We stand committed to the broad approach of the Bill as a whole. We are prepared, however to consider every clause in a spirit of accommodation. Naturally, Government have put forward this measure as it is because they believe in it. But in such matters they desire to have as large a measure of support as possible. Now there is a distinction between that and this general consideration at this stage which is going on, and which they feel has been debated quite considerably, and a large number of Members of the House have participated in this debate. They attach importance to the conclusion of that stage of the debate so that they may take up the next stage of consideration, that informal consideration, as soon as possible. Now that informal consideration cannot effectively take place in that way until this first stage is ended. Otherwise we remain in mid-air, and we cannot get on to that next stage. So our proposal now is, and I venture to place it before the House, that we conclude this debate, on this consideration motion as early as possible. I would not mind government giving more time, even at the expense of other legislative measures; but I would submit to the House that if the general proposal to have this informal discussion is agreeable to the House, then it is desirable to go to that stage and not to vitiate the atmosphere by acrimonious debate any more at this stage.

When I talk about informal consultations, I should like to make clear what I mean. I say 'informal', not that I do not consider it important, but because I wish to give a measure of flexibility to that discussion so that my hon. colleague the law Minister, who has shouldered the burden of this Bill, and who I trust will gladly accept and give effect to the proposals that I have made, so that he can consult not only the Members of the Select Committee, but other Members of this House who are interested and may even consult others outside this House. Now, that would be difficult if a certain rigid procedure was adopted, and also when you adopt a formal and rigid procedure, it becomes a little more difficult for that attitude of free and easy discussion, and give and take which might prevail more easily if the procedure were more flexible and informal. Therefore, I make this proposal to

the House and I do submit that in this matter, having considered all the discussions and debate that we have gone through, this is a reasonable proposal which should meet with the approval of all sections of the House because it is an attempt, a real attempt on the part of the Government to carry some thing through this House and through the country with the largest measure of support. That does not mean that in any matter over which we may disagree violently we give up our opinions or surrender to anyone else's judgement. No one expects any Member of this House to do that if he believes in something. But it is the essence of democratic procedure for us to debate and consider and try to convince each other and try to meet each others points, but some things giving up sometime so as to arrive at a decision which can be enforced with the largest measure of consent That is the procedure. I would submit to the House, that we should follow in this important measure also.

I do not wish the house to think in the slightest degree that we consider that this Hindu Code Bill is not of importance, because we do attach the greatest importance to it, as I said, not because of any particular clause or anything, but because of the basic approach to this vast problem in this country which is intimately allied to other problems, economic and social. We have achieved political freedom in this country, political independence. That is a stage in the journey and there are other stages, economic, social and others, and if society is to advance, there must be this integrated advance on all fronts. One advance on one front and being kept back on other fronts means functioning imperfectly, and also means that the first advance also is in danger. Therefore, we have to consider this matter in this spirit, how we should advance on all fronts, always keeping in view, of course, that the advance is co-ordinated and meets with the approval of the great majority of the population. I say this because, after all, we function as a democratic assembly answerable to the people of India, and we must carry them with us. Keeping that in view it is not good enough for us and for this House merely to be led. We have to lead and we have to give the lead, and in giving that lead we have to carry others with us, and we propose to give the lead in this and in other matters, but always carrying others with us.

This, therefore, is the procedure that I have detailed, that is to say, that we may put an end to the present stage of consideration of this motion by adopting it, and then the House may permit Government to take those informal steps which I have indicated in regard to consultation about the various parts and clauses. That might be undertaken so that when the matter comes up again, as I hope, at the next session, it may have the support of a very great majority in this House and outside.

The Honourable Shri Satyanarayan Sinha (Minister of State for Parliamentary Affairs) : Sir, I move:

" That the question be now put. "

Mr. **Naziruddin Ahmad** (West Bengal: Muslim) : May I ask for a clarification ?

Mr. Speaker: I do not think we need take any more time now, specially in view of the very frank statement made by the hon. the Leader of the House just now. I may remind hon. Members that this stage of the motion has been debated for full nine days and today is the tenth day. Thirty three speakers have taken part in it and we have devoted thirty hours and twenty eight minutes. I think the time devoted is sufficient and.....

An Honourable Member: May I know.....

Mr. Speaker : I am not bound to give any reasons when I accept a closure, but I think I should also explain what I feel about it. I am convinced from the statement just now made by the hon. the Prime Minister that everybody inside the House and outside the House is going to have a full chance of having a say with respect to the various provisions of the Bill. The present stage is the stage of general consideration and we are not discussing any particular clause of any particular item. It is possible that people may differ about details and yet so far as the generality of the Bill is concerned, there might be a great measure of agreement. If we were to continue our discussion at this stage, I am afraid our discussion is bound to be very vague, general and rambling; perhaps it will consist of repetitions also. The more important stage, therefore, is the clause by clause consideration of the Bill and before that stage comes, hon. Members will have every opportunity of considering all questions and discussing them with the Government and also other people outside the House.

Therefore, I think that proceeding with the further consideration of the Bill will mean practically a waste of time. I am therefore inclined to accept this closure and I would then call the Hon. Minister of Law to speak.

Sjt. **Rohini Kumar Chaudhari** (Assam: General): I would like to make a statement.

Mr. **Speaker** : What statement is the hon. Member going to make? If I permit the hon. Member to make a statement, everybody will feel entitled to make a statement. The hon. Member will please resume his seat.

Shri Mahavir Tyagi (U. P. : General): I want to have an interpretation from you. Sir whether, after this motion is adopted at this stage, would it mean that the House would be committed to the principles of all the clauses of the Bill?

Mr. **Speaker** : I will clarify the position. In fact, when the House accepted

the motion for reference to Select Committee, it accepted the principle of the Bill. Now, in a Bill of this type, it is very difficult to decide what the principle is, because every clause may be made into a principle. I may make the position clear. Looking to the extent of the provisions of this Bill—its wide extent— it is clear that the only principle accepted by the House is that it is desirable to codify the Hindu Law and every provision of the Bill is open for discussion, alteration, change and all that sort of thing.

Shri Mahavir Tyagi : Then we have no objection

Sir. Sjt. Rohini Kumar Chaudhari: I want to make a suggestion to the House on this motion. Closure may be moved and accepted. I have no objection to that. I do not want any further discussion on that subject. As a matter of fact, in order to create an atmosphere of compromise, I have myself not spoken in opposition to it. What I want to suggest is that this motion may not be put to the vote now. We want to convince the opposition outside that a practical gain has been made by the announcement of the hon. the prime Minister.

Mr. Speaker : I think that after the statement of the hon. the Leader of the House as regards the procedure and what I have said as regards what is going to be binding and what is not going to be binding, there remains no doubt as to the effect of carrying this consideration motion. In fact, it is not desirable to keep that point open so that when the consideration is again taken up, there may be further discussions and further inducements to speeches. I will therefore put the motion to the House.

Dr. P. S. Deshmukh (C. P. and Berar : General) : On a point of order. Sir. We have all heard the excellent suggestion made by the hon. the Prime Minister and there is no doubt that the House is likely to accept it. My point of order is that the question before the House is a motion for consideration. The suggestion now made really means referring the Bill back to the Select Committee.

Some Honourable Members : No, no.

Dr. P. S. Deshmukh : I put it to you. Sir, that this is circumventing the parliamentary procedure. The only procedure rightful and just, would be to commit the Bill to the Select Committee, either the same or an expanded committee. The suggestion made is against parliamentary procedure and should not be accepted. If the suggestion is acceptable to the House, I have not the slightest objection, but the regular procedure is to commit the Bill to the same Select Committee or a Select Committee, which may be enlarged.

Mr. Speaker : I see the force of the Hon. Member's objection from the procedural point of view, but what the hon. the Leader of the House has done is not to place any motion for further consideration before the House. He has

merely explained his position. He has stated how the Government is going to act and how it will proceed with the consideration of the clauses of the Bill ? There is no reference there for further reference to any formal Committee of this House. If such a motion were to be made, then of course I would have been glad to accept that point of order. At present there is no such motion before the House, and I think it is not against parliamentary procedure. On the contrary, even if it is a little different from the ordinary procedure, as, in my opinion democracy means a spirit of accommodation and give and take, we must evolve a new procedure. I will now put the motion to the House. The question is:

" That the question be now put. " *The motion was negatived.*

The Honourable Dr. B. R. Ambedkar (Minister of Law) : Sir, there are before the House in all three motions. Two of them are sponsored by Mr. Naziruddin Ahmad. One of them proposes a reference of the Bill to the Select Committee for further consideration. The second motion proposes that the Bill be circulated for eliciting further public opinion. In addition to them there is my motion before the House which proposes consideration of the report of the Select Committee. I propose to say a few words with regard to the motions moved by Mr. Naziruddin Ahmad. The one thing that I have noticed in the course of the debate which has ranged over nine days, is that it has had no support even from the opponents of the Bill. At the most, only two members out of the thirty three, who have taken part in this debate, have favoured his proposition. The rest of them have not supported him at all. Secondly it is quite clear to those who have followed his speech which was for more than six hours, that notwithstanding the fact that he was questioned from time to time while he was speaking to give us the reasons why this Bill should again be referred to the Select Committee or circulated to the public, he has in my judgement not succeeded in giving us any good ground for supporting his motions. I therefore, think that it is unnecessary for me to waste my time as well as the time of the House in dealing with his two motions.

Now Sir, I come to my own motion. As you have said, there have been altogether thirty three speakers who have taken part in this debate. I would like to give to the House some idea of the measure of support and the measure of opposition exhibited by the members of the House to this measure. Out of the thirty three members who have taken part in this debate, something like twenty three have spoken in favour. Out of these twenty three, there were only two who have said that they were prepared to give only qualified support to this Bill. Three remained neutral; three were for circulation and four for the postponement of the consideration of the Bill. It is therefore, quite clear that a very large majority of the Members of this House are in

favour of the Bill—as I said, as many as twentythree.

Sjt. Rohini Kumar Chaudhari : But does he know that thirtyfour persons who wanted to oppose the Bill, whose names were given. had no opportunity to speak?

The Honourable Dr. B. R. Ambedkar: I am only making an analysis of the speeches of those who have spoken. (*Interruption*).

Mr. Speaker: Order, order.

The Honourable Dr. B. R. Ambedkar : Taking the matter a little further and analysing the stand taken by those who have opposed the measure in order to see which part of the Bill has been attacked, I find that in this Bill which seeks to codify the Hindu Law relating to eight matters, there are five to which there has been no opposition whatsoever.

Sjt. Rohini Kumar Chaudhari : Because you didn't allow us to speak. **Mr. Speaker:** Order, order.

The Honourable Dr. B. R. Ambedkar: I hope. Sir my friend will not interrupt.

Mr. Speaker : The Hon. Member just now promised that he would not like to spoil the atmosphere of a compromise.

Sjt. Rohini Kumar Chaudhari : He is not to speak now that was the term of the compromise.

Mr. Speaker: Order order, No running commentary now.

The Honourable Dr. B. R. Ambedkar: As I said. Sir, the Bill seeks to modify and codify the Hindu Law with regard to Marriage, Adoption, Guardianship, Joint Family Property, Women's Property, Intestate Succession, Testamentary Succession and Maintenance. So far as Adoption is concerned, I have seen no opposition to this part of the Bill, nor to the part relating to Guardianship.....

Pandit Thakur Das Bhargava (East Punjab : General) : I opposed some of the provisions relating to adoption and absence of provision for appointment of heirs.

The Honourable Dr. B. R. Ambedkar : Nor to Women's Property, Testamentary Succession and Maintenance. The only parts of the Bill to which there has been some opposition are those which relate to Marriage, Joint Family Property and Intestate Succession. Even with regard to these parts of the Bill, the opposition is concentrated on one or two points.

Sjt. Rohini Kumar Chaudhari: On a point of order. Sir, You yourself ruled that all these matters can be discussed when we come to amendments.

Mr. Speaker : Will the hon. Member resume his seat ? I think Members have to be patient and must not interfere when other Members are putting forth their points of view. The hon. Minister must be allowed to go on

uninterrupted, and if hon. Members have to say anything, they will have a chance later on when the bill comes in for discussion here.

Sjt. Rohini Kumar Chaudhari: But, Sir if you don't allow us.....

Mr. Speaker: I do not propose to allow any interference at all.

Sjt. Rohini Kumar Chaudhari: To explain the position . . .

Mr. Speaker : Allowing to explain the position is again to go on replying at every sentence. I do not propose to allow anything of the kind. (*Interruption*). The hon. Member will not now interfere at all so that I may not be compelled to take a very serious notice of these interruptions or points of order or suggestions. But when I put the motion.....

Shri H. V. Kamath (C. P. and Berar : General) : Did you say, Sir, that the Bill would again come up for discussion?

Mr. Speaker: The clauses will come up for discussion.

Dr. B. Pattabhi Sitaramayya (Madras : General) : May I respectfully make a small suggestion? This is going to be discussed or not— the question of the consideration motion being accepted. Therefore, whatever statements are made by the hon. Minister in charge of the Bill, they will go unchallenged. And so long as they go unchallenged a vote cannot be correctly obtained. The hon. Mover has been absent for a number of hours and he is not posted with information as to what has been said or what has not been said. For instance he says that on the question of ' Adoption ' there was no opposition and here is a gentleman who rises and says that he did oppose those provisions. I would therefore request that the hon. Minister will not make his reply controversial.

Mr. Speaker : The point is as I have understood the hon. Minister that he is trying merely to summarise his point of view.

Dr. B. Pattabhi Sitaramayya: No.

Mr. Speaker : Order, Order. Let hon. Members not interfere. I believe he *is* perfectly entitled to lay before the House his point of view. It may be correct, it may not be correct. Therefore, when he is replying, his reply has to be heard for what it is worth. Hon. Members should not immediately get up and say " this statement is wrong " or " that statement is wrong " because we will then be drifting into a controversy. Let us hear him. And the best method of democracy is to be patient with the opponent.

Sjt. **Rohini Kumar Chaudhari :** Can we not reply to the wrong ' statements made?

Mr. **Speaker :** No reply now because the opposition will get their chance when the clause by clause reading comes in.

Sjt. Rohini Kumar Chaudhari : He will also get a chance then.

Mr. **Speaker:** If the hon. Member now interferes I am afraid I will have to

take a very serious notice. There should be no interruption at all, no interference and no remarks. The hon. the Law Minister is entitled to proceed and give his own interpretation and his own reading of the facts as he thinks, are correct. We may not all agree with it (*Interruption*). Order No replies, no arguments now. I propose to allow no interruption. The hon. the Law Minister will go on.

The Honourable Dr. B. R. Ambedkar: Sir, as I was saying, to five parts of the Bill there is practically no opposition. With regard to the three parts relating to Marriage, Joint Family Property and Intestate Succession, so far as I have been able to follow the attitude taken by those who have opposed this measure, I find that their opposition is concentrated on certain points and not to the whole of those parts. With regard to Marriage I find the .Opposition is concentrated on the subject matter of Divorce. With regard to Joint Family again, the opposition seems to be concentrated on the rule of survivorship. And with regard to Intestate Succession the opposition seems to be concentrated on the daughter's share. If I was therefore required to give a full reply to the debate and to the arguments advanced by those who have opposed the measure I would have concentrated myself upon these three matters, namely Divorce, the rule of survivorship and the daughter's share. I might say that I had thoroughly prepared myself to defend the provisions contained in these three parts of the Bill. But in view of the statement made by hon. the Prime Minister, I think it is unnecessary to enter into any controversy now. I welcome the suggestion made by hon. the Prime Minister and I undertake to give the fullest trial to the suggestion that he has made. Consequently I do not propose to give a detailed reply on these matters at this stage. As you, Sir, have suggested I too would like to reserve my reply to a later stage.

There is only one point which I think it is necessary for me to dwell upon in order that the House may realise the position in which the country finds itself. It will be noticed that the integration of India into one State and one Republic has brought within its territory a variety of Codes dealing with Hindu Law. There is the State of Baroda which has a Hindu Code which is different from the Hindu law as it is in operation in the provinces of India. That State has now become part and parcel of the Bombay Province. Similarly, Travancore and Cochin which were outside the territorial limits and the sovereignty of India as we knew under the Government of India Act, 1935, have become part and parcel of one India. Mysore which has also a Hindu Code of its own in the matter of women's right to property, considerably different from the law prevalent in the Provinces of British India, has also become part and parcel of one India. Therefore, on the 26th of January, 1950, when the Republic will be

inaugurated, we will be faced with a variety of systems of Hindu Law which we must do our best to co-ordinate. How would it be possible, for instance, for the Bombay Province to administer two systems of Hindu Law, one operative within that territory which is called Baroda and the other in the rest of the Province, when both territories have become integrated and part of one Province and one State? The same will be the case with the other territories. Supposing for instance, some of the parts of India which are under the sovereignty of the Portuguese or the French and which we hope to be able to recover under our dominion, also have different systems of Hindu Law, when they come in the same question will arise before us. What is to happen to the Law which the Hindus in Goa will be bringing with them? Are we going to allow them to retain the law which they will bring? Are we going to impose a Law which is in existence at present on them? Or are we going to evolve a system of Law which would be acceptable to both? The integration of India, therefore, has in a very pointed manner brought before us the problem of the codification and the modification of Hindu Law and what I want to suggest to the House is that this is a problem which could not be postponed nor could it be avoided if we want to bring about harmony among the variety of people who would be coming and becoming the citizens of the Indian Dominion.

Dr. B. Pattabhi Sitaramayya: Codification has been accepted.

The Honourable Dr. B. R. Ambedkar: Then, Sir, I would like to draw the attention of the House to one other point which appears to me a very important one. The House, at any rate those who indulge in opposing the Bill, seem to have completely forgotten the provisions contained in the Indian Constitution. Article 15 of the Indian Constitution which we have passed says in definite and clear terms under Fundamental Rights:

" The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. " will become void. Is it his contention that on the 26th January when the new Constitution comes into force, and the article which he has quoted certainly come into force, on that day all this portion of the Hindu Law become void and there will be a vacuum left? Can a more unreasonable presumption be made ?

Mr. Speaker : Order, order. That is expressing hon. Member's own opinion.

The Honourable Dr. B. R. Ambedkar: Sir, I have exercised, if I may say so, a great deal of self-control with regard to my friend Dr. Pattabhi Sitaramayya. He would have heard me say, if I had said all that I wanted to say about it.

Mr. Speaker: There are two amendments to the original proposition : That the Bill to amend and codify certain branches of the Hindu Law as reported by

the Select Committee, be taken into consideration. I shall first put to the House the amendments. The first amendment is by Mr. Naziruddin Ahmad asking for circulation for obtaining further opinion thereon by the end of 1949. It is too late to extend the date.

Mr. **Naziruddin Ahmad**: May I explain the position, Sir ?

Mr. **Speaker**: No. The question is:

" That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949." The motion was negatived.

Mr. **Speaker**: Then the next amendment. The question is:

" That the Bill be re-committed to the same Select Committee, to which it was sent, for a further report thereon with reference to the original Bill which was referred to it on the 9th April 1948. "

The motion was negatived.

Mr. **Naziruddin Ahmad**: I claim a division.

Sir. Mr. **Speaker** : Very well. I find the ' Ayes ' are five and the rest are ' Noes '. The motion is lost by a large majority. Now I will put the original motion. The question is:

" That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration. " The motion was adopted.

Prof. Shibban Lal Saksena (U. P. General): Sir, the ' Noes ' have it.

Mr. **Speaker** : I find their number is only six or seven. The majority of Members are for the motion.

HINDU MARRIAGES VALIDITY

(AMENDMENT) BILL (AMENDMENT OF SECTION 2)

Shri Himatemgka (West Bengal) :I beg to move for leave to introduce a Bill further to amend the Hindu Marriages Validity Act, 1949 (*amendment of section 2*).

Mr. **Speaker** : The question is :

" The leave be granted to introduce a Bill further to amend the Hindu Marriages Validity Act, 1949 (*Amendment of section 2*)."

The motion was adopted.

Shri Himatsingka: I introduce the Bill.

HINDU CODE

Mr. **Speaker**: That brings us to the next item on the agenda, the motion of Dr. Ambedkar: Further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee.

Now, with reference to this there are a number of amendments. I will just call upon Members one by one.

Shri Tyagi (Uttar Pradesh): The House has been taken quite unaware on

this matter. I feel that some time should be given to the Members.

Mr. Speaker: Order, order. One at a time. Has the Hon. Law Minister anything to say ?

The Minister of Law (Dr. Ambedkar): It might be taken.

Mr. Speaker : There was some suggestion that Members are being taken by surprise.

Dr. Ambedkar: It cannot be said because the Bill has been on the agenda for the last fortnight.

Shri J. R. Kapoor (Uttar Pradesh): But those who are most interested in taking up the Bill may have a grievance. Mrs. Renuka Ray is not here and many others who are particularly anxious to take it up.

Mr. Speaker : What I was thinking about was, whatever the fate of the various amendments or adjournment motions, the Members who have tabled them are not in their seats. I was just considering as to whether it will be proper or fair on our part just to call them out when this business is being taken up in an unexpected manner. That is the only point which really worries me. I find that Mr. Rohini Kumar Chaudhari is present. I also notice that Mr. Naziruddin Ahmad is here.

Shri R. K. Chaudhari (Assam) : I would ask you to give us half an hour so that other Members may also be present.

Mr. Speaker: Let us proceed. I will call upon Mr. Naziruddin Ahmad.

Pandit Kunzru (Uttar Pradesh) : May I suggest that the discussion should begin with a statement from the Hon. the Law Minister who held a conference with various interests. He has circulated a short report of the discussions that took place in the conference, but I think all sides of the House will be glad to hear a fuller account of the conference from him and the resume of the amendments that he has proposed. I think that would be a more proper course and this in a sense will give Members some time.

Dr. Ambedkar : I do not know that I have anything more to add. I took particular care to submit a statement to you with a view to its being circulated to Members at the very commencement of this session, so that Members may have a full account of what happened. I am rather sorry that we were not able to take a verbatim record of the proceedings of the Conference on account of the fact that several Members spoke in several different languages. Some spoke in Hindi, some spoke in English, some spoke in Marathi, some spoke in Gujarati and some spoke even in Sanskrit. It was quite impossible to take down a verbatim record, and I think, some also spoke in Tamil language. It was, therefore, quite impossible to have any person as a stenographer to take down the verbatim record. Otherwise, I should have been very glad to do so. Consequently, I myself, according to my memory summarised the points that

were put before the Conference for discussion, the points which I found had emerged in the course of the discussion that had taken place in this House, from different stands of the House. They were placed before them and they were invited to address the Conference and I subsequently found out what was the largest measure of agreement among the speakers who took part and in accordance with that, I have suggested certain amendments to the original Bill.

You will also recall, Sir that in order to help the House. I have prepared two different texts of the Hindu Code, one in a serial order giving the original section and also the new amendments that I propose to incorporate, so that they may have a complete view. I have also prepared a second text book, so to say, which contains the original text of the Select Committee's sections on the right-hand side and the new Code with the amendments on the left-hand side, so that whenever any amendment is moved not only the members will be able to find how the old clause reads but what the new clause also says. I think, I have done my level best to help the House to a proper understanding of the provisions of the Hindu Code as modified by the results of the informal committee. If any Hon. Member has any question to ask, I shall certainly be very glad to add or supplement whatever information I have given in that statement.

Shri Jnani Ram (Bihar) : The Hon. Law Minister has stated that this Bill will be discussed for a day or two and that it will be postponed.

Mr. Speaker: We are not concerned with what happened at the party meeting.

Shri R. K. Chaudhari : The Hon. Minister may be pleased to make a statement in connection with what was stated in the party meeting itself.

Mr. Speaker: Order, order. The Party proceedings are not open here.

Shri Sivan Pillay (Travancore-Cochin) : May I know if the clause by clause discussion is to take place now and that the general discussion on the principles of the Bill over ?

Mr. Speaker: The Hon. Member has perhaps lost sight of the progress of the Bill. The consideration motion was adopted and now what remains to be done is to take the Bill clause by clause. I would put clause 2 to the House, but before that, there are certain amendments or certain motions urging the adjournment of the debate. These being adjournment motions must have precedence and, therefore, I am calling upon Mr. Naziruddin Ahmad, if he wishes, of course, to move his motion.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru) : One of the hon. Members put ascertain question to me and I think it is fair to the house that I shall answer it, although you, Sir, were good enough

to consider it as being not necessary. This Bill is obviously one which will normally take a long time of this House, if we go through it clause by clause. It is a contentious matter in which opinions differ. Nevertheless Government attach great importance to it and we do wish it to be taken up now, but we realise that it is in the nature of things, not possible to go through it during this session even if we take it from day to day. Therefore, Government propose, subject to your approval. Sir, that we might deal with the initial stage there are certain objections and if all those objections can be disposed of this way or that—so that the way may be clear and not otherwise take up the time of the House during the session.

Mr. Speaker: Do I understand the position correctly that the amendments or motions by way of postponement should be disposed of first and that clause by clause consideration may be taken up later ?

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha): Yes. That is so.

Mr. Speaker : In light of this, is it necessary to move any adjournment ?

Shri Naziruddin Ahmad (West Bengal): No.

Mr. Speaker : He may formally move without any speech, so that we may proceed with the other business.

Shri Naziruddin Ahmad: I beg to move:

" That the debate on the Hindu Code Bill be adjourned to a special session of Parliament to be called for the purpose to enable Members to fully consider the Bill and the numerous Government amendments to the same. "

I do not wish to move the other alternatives.

Mr. Speaker: Is he particular for a special session ?

Shri Naziruddin Ahmad : I want to place certain views and leave the matter entirely to Government. It is not by way of opposition or obstruction.

Mr. Speaker : The point is what should be the form of the motion. He wants postponement to the next session. That is the long and short of it.

Shri Naziruddin Ahmad: In that case, I shall, with your permission, move the alternatives also. I beg to move:

" That the debate on the Hindu Code Bill be adjourned till a date during the next Budget session. " and

" That the debate on the Hindu Code Bill be adjourned to a date after the Budget session is over."

I am entirely in the hands of Government as to what form the motion should take. The Hon. Prime Minister has clarified the situation that we consider certain objections and later on at a suitable time we take up the clause by clause consideration. That entirely satisfies my point of view. It

would be for the Government to consider and fix a suitable date or time.

We no doubt technically accepted the principles of the Bill, but subject to a certain understanding. Though not incorporated in the proceedings, the Hon. Law Minister gave an undertaking that he will seek representative public opinion conversant with the Hindu Law, and suggest amendments to the Bill. As I have already submitted, though the first reading was passed, it was substantially subject to Government being able to find suitable amending formulae to be placed before the House, and which would be acceptable to both sides. I find, however, that a large number of amendments of a very important character have been tabled by the Hon. the Law Minister. I also find that a very large number of amendments have been tabled by the members. There are 17 lists already before us and from the newspaper reports, I find that Government have decided to hold another final session for clause by clause consideration. There is every reason to suppose that if it were not so, many more amendments would have come and that is a matter for serious consideration.

My point is this. These are very important matters. In clause by clause consideration, we must not lose sight of the fact that the House is very seriously divided in matters of detail. In these circumstances, it would be better, I submit, for Government to give the House sufficient time to consider, the amendments, and find out the points of agreement. The Hon. Law Minister said that he consulted a number of people; but he did not, so far as I am aware, consult the different sections of the House which were opposed to the principles of the Bill. A number of Members opposed the first Reading who have not been consulted.

Shri Tyagi : All of them were not Hindus.

Shri Naziruddin Ahmad : At least there was one who was not a Hindu, that is myself. The point is this. All these matters could not properly be discussed and decided upon on the floor of the House. They go to the fundamentals of the Bill. Each clause is practically a new and important subject. Each clause calls for a detailed consideration. Therefore, my submission is that the Government should give us time and should be willing to sit at a Round Table Conference to straighten out all these differences so that a Bill more acceptable to the House in general may be evolved. These things should not be allowed to be decided on the spur of the moment and on the floor of the House.

Great things have happened meanwhile. The Indian States have been integrated. Their opinions were never taken. I believe agricultural land is now within the purview of the Bill. This creates another new situation. Therefore, in the light of important amendments coming from Government, and in view of

the extension of the area geographically as well as to subjects. I think enough time should be given so that full consideration may be given to the Bill by members. There should be good machinery to settle these differences so that some agreed or some largely agreed formulae may be evolved. On a controversial legislation like this, we should be given sufficient time. I submit that the point of view I submitted during the first reading stage was fully justified in view of the fact that at that time, the Hindu community's attention was not sufficiently drawn to it. My objection has again been justified by the fact that Government, itself has come forward with a large number of substantial amendments. My task is done. I supposed at that time that I was doing a public duty in drawing attention to certain defects which would have otherwise escaped attention. What kind of law would suit this House and the Hindu community is really primarily a matter for the Hindus. I am not primarily interested in the exact form and shape in which the Hindu Code is to be passed. My position is merely to indicate certain practical considerations and suggest amendments. From these points of view, I think Government should consider the matter and let us know what they want to do, and I am ready to offer constructive help to the passage of the Bill. The exact shape which the disputed clauses will take is not a matter of much personal interest to me, though not a matter in which I have no concern at all. I submit that these are matters which would induce Government to give us sufficient time and devise a machinery to solve the differences of opinion and adopt a code which would be more or less acceptable generally to the House. That is all I have to submit.

Shri Sidhva (Madhya Pradesh) : On a point of information. Sir. The hon. Member had two amendments, one for adjournment *sine die* and

Mr. **Speaker**: I am not permitting that.

I was just considering as to what would be the best form of the motion. One is for a special session, and the other is still a date during the Budget Session; the third is, sometime after the Budget Session is over. Shall we postpone till the next session ?

Shri Naziruddin Ahmed : I am entirely in the hands of Government.

Mr. **Speaker**: The usual amendment is of course till the next Session. Shall I say: " That the debate on the Hindu Code Bill be adjourned to a date during or after the next Budget Session ? "

Dr. Ambedkar : So far as the objective is concerned, there is, of course, no dispute between Members of Government and others who are in perfect harmony with Government's view on this subject, namely, that more time may be given to Members to study the Bill and to give their considered opinions. As the Prime Minister just now said, it is not the intention of Government to

proceed *seriatim* with the consideration of the Bill, clause by clause. Therefore, my submission is this, that it should be left to Government to take up the Hindu Code Bill next session whenever they want to take it. They may have a special session, they may have a larger Budget session, so that part of it may be devoted to the Hindu Code Bill and part to the usual Budget discussion or it may call for some other session after the Budget Session. I do not want Government's hands to be tied down by any particular motion. As I said, I do not propose to carry through this Bill during this session. It is quite impossible. And it might probably *be* quite unfair. All the same, I want to oppose the motion, because I do not want to postpone the consideration of the Bill as a result of the motion moved by Mr. Naziruddin Ahmad. Government have given an assurance and Government will abide by it.

Shri Naziruddin Ahmad : I do not know why I should become the target of these oblique remarks.

Mr. Speaker : Therefore, I need not seriously consider the form of the motion.

Dr. Ambedkar : He may move all the motions and we shall negative them.

Shri Tyagi: Or we may move the previous question and this question may be postponed.

Mr. Speaker : I do not think that is necessary. Well, supposing I say that the matter is adjourned and we take the next business ?

Dr. Ambedkar : May I suggest that it would be very good, in my judgment, if you, after disposing of the motion by Mr. Naziruddin Ahmad

Shri Naziruddin Ahmad: Dispose of me!

Dr. Ambedkar : If after disposing of it, you merely say that clause 2 stand part of the Bill. And then I myself will move that the further consideration of the Bill be now postponed. I am prepared to put the Hindu Code Bill at the bottom of Government's agenda.

Shri R. K. Chaudhari: I had tabled an amendment, though I cannot say exactly what it is, because I have not got the papers with me now. I was not prepared for this subject. But if I remember a right, my motion was that we may have a special session for the purpose of dealing with the Hindu Code Bill. My grievance against bringing this sort of discussion in the midst of a very busy session is that we cannot get proper opportunity to study the subject. Therefore, I want to have this question considered in a special session.

Shri M. A. Ayyangar (Madras) : After all, Mr. Naziruddin Ahmad's motion only asks that sufficient time should be allowed to Members. And the Prime Minister has also agreed to this. Therefore, I would request Mr. Naziruddin

Ahmad not to press his motion, and now, in view of the Prime Minister's statement, this may be adjourned to some day next session. And it is for Government to fix the date during the next session, or call for a special session immediately thereafter. Now that we agree that we should not take up the clause by clause consideration of the Bill, I think both sides are satisfied. Therefore, let the Prime Minister's statement be accepted and Mr. Naziruddin Ahmad need not press his amendment. Therefore, this may be adjourned to some day next session and it will mean that the Prime Minister or Government will fix the date that is suitable and convenient.

Dr. Ambedkar : May I again intervene ? I do not want a repetition of what has been taking place in this House. Every time this Bill comes in, some hon. Member takes it into his head to move a dilatory motion. Now this thing must stop. We have reached a stage when it is proper that the Bill should be taken up clause by clause, and therefore, in token of the fact that the House has consented to the consideration of the Bill, clause by clause, I would request you, that you should put clause 2 to the House ; and thereafter we may adjourn the discussion.

Shri Naziruddin Ahmad: I think the object of these oblique remarks is my humble self. I can give even a fuller undertaking that I will not bring in any dilatory motion.

Mr. Speaker : But there are not only the positions stated by the Law Minister and Mr. Naziruddin Ahmad, but there is also the difficulty of Mr. Chaudhari. Therefore, I think what I should do is this. I shall place the motions before the House and it can vote upon them.

Shri R. K. Chaudhari: But I have to explain my motion.

Sir. **Mr. Speaker :** The hon. Member has already explained it. I don't think any further time need be taken over this.

Shri M. A. Ayyangar : May I tell Mr. Chaudhari that as the object of his motion is that this question should be adjourned to a special session, we will assume that it is defeated. It is impossible to have a special session. Anyway, let us leave the entire matter in the hands of Government. They may tag it on to the Budget session to fix some convenient time. Why should he commit to have a special session ? If government finds it necessary to have one, they may have one. It does not serve any purpose committing them to have a special session.

Dr. Pattabhi (Madras) : The attitude of Government has more or less taken a change favourable to a more leisurely consideration of this subject. I do not want to dilate upon the subject at any great length. But I shall certainly object to the Hon. the Law Minister saying in a pedagogic manner that this kind of asking for adjournment will not be allowed. It must be allowed. It is the

right of every member of this house to use all legitimate methods of opposition where there is an honest and sincere conviction on the side of opposition. I do not go the length of Balfour who said that it is the duty of the opposition to oppose the Government by all fair means if possible, and by all foul means, if necessary. But I will only say this much that if the Prime Minister in the abundance of his wisdom admitted that there are two schools of thought, and he has conceded the adjournment of the proposition very generously and very fairly, in view of that for the Hon. Law Minister to assume this professorial, pedagogic and pontifical attitude, is not desirable. It will only alienate attitudes that have almost been reconciled.

Shri Naziruddin Ahmad : And persons call up an opposition where there is none now!

Shri Jawaharlal Nehru : I want to make it perfectly clear that I stand by every word that the Hon. Law Minister has said. The position is this. Everyone feels that there should be fuller time for the consideration of this question, and therefore we decided to suggest to the House that the clause by clause consideration might take place later. We should decide clearly the nature of the motion. If it is a dilatory motion and if the hon. Member wants the motion to be considered, let us consider it here and now. We are not going to postpone that motion. I do not want to prevent any motion. If we have a dilatory motion, it must be decided here and now.

Pandit Malaviya (Uttar Pradesh): We know that there are very emphatic differences of opinion on this point; that acute differences of opinion exist between different sections of this House. Our Prime Minister has taken the practical view, and as we have the right to expect always, he has given us a lead in this matter and has said that this is a controversial issue on which a great deal of time has, in the very nature of things, to be given. May I appeal that since the matter is to be postponed, since no practical purpose is going to be served by our continuing this debate today on any motion or on any section; since there is a very keen and definite difference of opinion on this issue; and since the question of the enactment of the Hindu Code itself will not in any way be advanced by its being taken up now, may I respectfully submit that no section, no viewpoint, will lose anything if we leave the matter where it stands, as the item is going to be postponed. If the intention were to take the Bill into consideration and make any real progress, I would have nothing to say because, then, every Member would have the opportunity of expressing his views, and then whatever the house decided in its collective wisdom, would come on the Statute Book. But, since, according to the course suggested, no real progress is going to be made, I suggest that the very great opposition, the very great anxiety which prevails in the country should not be

worsened, should not be deepened. I know that one view unfortunately is that it does not matter what the country thinks on this matter. But there is the other view that every side of the question should be carefully considered and respected. I do not wish to go into that matter in detail now. But I most earnestly appeal to Government not to do an unnecessary thing which will serve no useful purpose, but which will, on the other hand, create still greater resentment and dissatisfaction in the country. I submit that if we are going to postpone this matter and I fully approve the proposal—we should do so wholeheartedly instead of saying that we are postponing and yet we are not postponing, we are not taking it up now and yet we are taking it up, we are not going on with it and yet we are going on with it. Therefore, if the matter is to be postponed it should be postponed immediately as it is till such future date as Government may fix for it.

Pandit M. B. Bhargava (Ajmer) : I have not been able to follow the Hon. Law Minister's proposal. Does he want the Chair to rule for all time to come that in this House no adjournment motion shall be brought forward ? It is a constitutional issue that is sought to be raised and it is for the Chair to rule. As I understand it, it is an absolute right of every Member of the House to bring forward an adjournment motion at any time. Of course it will be for the Chair to admit it or not. If the Chair thinks that it is a dilatory motion it will not grant permission. Even if the Chair rules that such a motion is admissible, then it will be for the House to discuss it and then accept it or reject it. But so far as the right of a Member is concerned, it is an absolute right and he can move an adjournment motion at any stage. If you put clause 2 to the House and say that any time during the progress of the Bill there can be no postponement whatsoever, it is a constitutional issue.

Shri Naziruddin Ahmad : That is subject to the speaker's consent.

Mr. Speaker : I do not think I will express any opinion just at present as to whether in future any motion for adjournment can or would be allowed. That will depend upon the circumstances existing at the time such a motion is brought before the House. The Hon. Law Minister's point seems to be that the House is—not constitutionally or legally but—morally committed to the position that no dilatory motions just with a view to obtain the postponement of the Bill should be brought forward

Dr. Ambedkar: That is all.

Mr. Speaker: That seems to be his only point. I do not think that he meant to fetter the constitutional rights of Members. I would, therefore suggest that instead of putting clause 2 to the House and then postponing the matter, let us adjourn straightaway without putting the motion on clause 2 of the Bill, with a declaration about our moral commitment that such a motion will not be

brought forward just for the purpose of securing postponement and no other object. Some Hon. Members: No, no.

Mr. Speaker: The point is very important one. While the Law Minister was making a statement to that effect, though I could see his point and the force of it, I myself am not expressing a final opinion. I am open to conviction. No one need think that it will be possible to bar each and every Member of this House from bringing an adjournment motion, if one is inclined to do so. The Chair may refuse to put it on the ground that it is a dilatory motion but that will depend upon the circumstances then existing when such a motion is brought forward. From my point of view it really makes no difference whether clause 2 is put and then the matter is adjourned. Therefore, as I said ; I would make a declaration about this moral binding on the part of the members of this House not to have any dilatory motion so far as this Bill is concerned and then adjourn the matter. I would therefore not like to have that constitutional issue raised again nor keep it alive for a second time as to whether such a motion could or could not be brought forward. I will proceed to adjourn the business and Government. . . .

Dr. Ambedkar: Do these motions then stand out ?

Mr. Speaker : These motions will fall through.

Dr. Ambedkar : What is the fate of these motions ?

Mr. Speaker : The members do not press the motions. If they had pressed their motions, then I was bound to put them to the House.

Some Hon. Members : They have not said so.

Mr. Speaker : I have asked them.

Mr. R. K. Chaudhari : Because a moral question has been raised I would rather like to have my motion put to the House and the House will decide whether it is dilatory or not.

Mr. Speaker : Then the position is quite clear. I will straightaway put it to the House and then we may proceed further. I am putting Mr. R. K. Chaudhari's motion to the House now.

Shri R. K. Chaudhari : Sir, on a maturer and second consideration I, do not propose to press my motion.

Mr. Speaker : So, since the consideration of the matter is now mature, let us proceed to postpone this and Government may fix a date

Some Hon. Members : He should withdraw by leave of the House.

Mr. Speaker : Our rule is when no motion is moved no leave is necessary.

Shrimati Durgabai (Madras) : I want to know whether this adjournment motion is under consideration.

Mr. Speaker : The whole thing falls through. The adjournment motions that they have tabled fall through. Nothing remains now. They have been

asked and they do not press them. As regards the others that have tabled similar motions they were not present when they were called upon to move. That is the position. Now the debate is being adjourned. It is not possible to bind all people for all time. If the circumstances arise we shall then meet them.

Shri Tyagi : Only such persons who have moved...

Mr. Speaker : Unfortunately the hon. Member does not seem to have followed the discussion. No motion has been placed before the House by me. Unless I place a motion before the House there is no occasion for putting it to the vote of the House or even to withdraw it.

Shri Tyagi : There is no moral obligation then ?

Mr. Speaker : The moral obligation is there.

Shri Tyagi : I would rather prefer to be immoral.

Shrimati Durgabai : These motions were moved but not pressed.

Mr. Speaker: These motions are not moved at all. I have not placed them before the House.

Shrimati Durgabai : The hon. Member moved and then did not press his motion.

Mr. **Speaker** : What difference does it make ? If he moves the motion and it is voted against, does it mean that no such motion can ever be brought again ?

Shri Tyagi : Today only we are morally bound.

Mr. Speaker : It is a moral binding for all time. Let there be no further discussion. We shall proceed to the next item of business.

Shrimati **Renuka** Ray (West Bengal) : *rose*—

Mr. Speaker : The matter is closed and there can be no further discussion.

[Contents](#)